

## Rulemaking Hearing Rules

of the

State Board of Education

Chapter 0520-1-9

Special Education Programs and Services

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### Amendments

Rule 0520-1-9 Special Education Programs and Services is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

#### 0520-1-9-.01 DEFINITIONS.

Words and phrases used in this part shall have the following meanings except where the context demands otherwise:

- (1) "Administrative Complaint" means the processes established by Federal and State Regulations to ensure that the mandates of the IDEA are properly carried out by the State and the LEA.
- (2) "Adversely Affects" means when a child's disability significantly impacts progress in the general curriculum.
- (3) "Assessment" means gathering and integrating information to determine a student's current level of emotional, behavioral, academic and intellectual functioning, resulting educational needs and strategies for remediation to promote an effective educational program. Common assessment methods may include standardized tests, interviews, behavioral assessments, rating scales, perception tests and neurophysical tests.
- (4) "Assistive Technology Device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.
- (5) "Assistive Technology Service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - (a) The assessment of the needs of a child with a disability, including a functional assessment of the child in the child's customary environment;

(Rule 0520-1-9-.01, continued)

- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
  - (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
  - (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.
- (6) “CFR” is an acronym for Code of Federal Regulations.
- (7) "Child Find" see 0520-1-9-.04.
- (8) “Child with a Disability” means a child or youth between the ages of three (3) and twenty-one (21) years, inclusive, evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, a developmental delay, an orthopedic impairment, autism, traumatic brain injury, other health impairments, a specific learning disability, deaf-blindness, multiple disabilities, intellectual giftedness, or a functional delay. If it is determined, through an appropriate evaluation that a child has one (1) of the disabilities identified above, but only needs a related service and not special education, the child is not a child with a disability under IDEA or state standards.
- Any youth with a disability who turn twenty-two (22) years of age between the commencement of the school year in August and the conclusion of the following June, will continue to be a “child with disabilities” for the remainder of the school year.
- (9) “Consent” means that:
- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
  - (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom or to what agency;
  - (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. Revocation of consent must be in writing; and
  - (d) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). Revocation is not effective until received by the LEA to which the consent was granted.
- (10) “Controlled Substance” means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c)). It does not include alcohol or tobacco.
- (11) "Day" means a calendar day unless otherwise indicated as business day or school day.

(Rule 0520-1-9-.01, continued)

- (a) "Business Day" means Monday through Friday, except for Federal and State holidays.
  - (b) "School Day" means any day, including a partial day, that children are in attendance at school for instructional purposes and has the same meaning for all children in school.
- (12) "Department" means the Tennessee Department of Education.
- (13) "Destruction" means the physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (14) "Direct Services" mean services provided to a child with a disability by the Department directly, by contract, or through other arrangements.
- (15) "Disabilities"
  - (a) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in this section. After age three (3), a child could be diagnosed as having autism if the child manifests the above characteristics.

The term of autism may also include students who have been diagnosed with an Autism Spectrum Disorder such as Autism, Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS) or Asperger's Syndrome when the child's educational performance is adversely affected. Additionally, it may also include a diagnosis of a Pervasive Developmental Disorder such as Rett's or Childhood Disintegrative Disorder. Autism may exist concurrently with other areas of disability.
  - (b) "Deaf-blindness" means concomitant hearing and visual impairments the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated by addressing any one of the impairments.
  - (c) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.
  - (d) "Developmental Delay" means a child ages three (3) through nine (9) who is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical, cognitive, communication development, social or emotional, or adaptive development, that adversely affects a child's educational performance. Other disability categories should be used if they are more descriptive of a young child's strengths and needs. Local school systems have the option of using developmental delay as a disability category.
  - (e) "Emotional Disturbance" means a child or youth who exhibits one (1) or more of the characteristics as listed in the state adopted eligibility criteria over a long period of time and to a marked degree that adversely affects a child's educational performance. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(Rule 0520-1-9-.01, continued)

- (f) “Functionally Delayed” means a child who has or develops a continuing disability in intellectual functioning and achievement which significantly affects the ability to think and/or act in the general school program, but who is functioning socially at or near a level appropriate to his or her chronological age.
- (g) “Hearing Impairment” means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include deafness.
- (h) “Intellectually Gifted” means a child whose intellectual abilities and potential for achievement are so outstanding that special provisions are required to meet the child’s educational needs.
- (i) “Mental Retardation” means substantial limitations in present levels of functioning that adversely affect a child’s educational performance. It is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
- (j) “Multiple Disabilities” means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one of the impairments. The term does not include deaf-blindness.
- (k) “Orthopedic/Physical Impairment” means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (i.e., clubfoot, absence of some member), impairments caused by disease (i.e., poliomyelitis, bone tuberculosis) and impairments from other causes (i.e., cerebral palsy, amputations, and fractures or burns that cause contractures).
- (l) “Other Health Impairment” means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:  
  
Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and adversely affects a child's educational performance.
- (m) “Specific Learning Disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
- (n) “Speech or Language Impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.
- (o) “Traumatic Brain Injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(Rule 0520-1-9-.01, continued)

- (p) “Visual Impairment Including Blindness” means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness.
- (16) “Division” means the Division of Special Education of the Tennessee Department of Education.
- (17) “Due Process Procedures” see Due Process Hearing 0520-1-9-.14(10).
- (18) “Educational Placement” means the instructional environment in which special education is provided to a child eligible for special education but does not mean the specific classroom or school to which a child is assigned.
- (19) “Education Records” mean those records that are:
  - (a) Directly related to a student; and
  - (b) Maintained by an educational agency or by a party acting for the agency or institution (34 CFR § Part 9 (FERPA)).
- (20) “A Child Eligible for Special Education” means a child or youth, who meets the definition of a child with a disability, and has been determined by an IEP Team to be unable to be educated appropriately in the general education program without the provision of special education.
- (21) “Evaluation” means a procedure used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class.
- (22) “Evaluation/Reevaluation Report” means a summary of evaluation/reevaluation results obtained in the process of collecting information to determine if the child is a child with a disability or continues to be a child with a disability. The report(s) will vary from student to student, depending upon the type of evaluation completed (i.e., psychological evaluation report, occupational therapy evaluation report, speech/language therapist’s evaluation results reflected in the eligibility report, etc.). An evaluation/reevaluation report shall include a summary of assessments.
- (23) “Extended School Year (ESY) Services” mean special education and related services that:
  - (a) Are provided to a child with a disability beyond the normal school year of the LEA;
  - (b) In accordance with the child’s individualized education program (IEP);
  - (c) At no cost to the parents of the child or the student; and
  - (d) Meet the standards of the Department.
- (24) “Family Education Rights and Privacy Act (FERPA)” means the collective name for federal legislation prohibiting educational agencies or institutions from releasing education records of students unless consistent with terms of 20 USC § 1232 and 34 CFR § Part 99.
- (25) “Free Appropriate Public Education (FAPE)” means special education and related services that:
  - (a) Are provided at public expense, under public supervision and direction, and without charge to the parents or student;

(Rule 0520-1-9-.01, continued)

- (b) Meet the standards of the Department, including the requirements of the Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools;
  - (c) Include preschool, elementary school or secondary school education in Tennessee; and
  - (d) Are provided in conformity with an IEP.
- (26) “Functional Behavior Assessment (FBA)” is a process for analyzing the reason why students engage in certain behaviors. The FBA examines the context (antecedents and consequences) in which behaviors occur. The process provides educators an opportunity to develop effective intervention plans as part of the IEP for the students with disabilities.
- (27) “General Curriculum” refers to the curriculum approved by the State Board of Education.
- (28) “Individuals with Disabilities Education Act (IDEA)” means the collective name for federal legislation codified at 20 USC § 1400, et seq. as amended, providing federal funds for early intervention services and special education and related services to children with disabilities in accordance with standards set by the IDEA.
- (29) “Illegal Drug” means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under the IDEA or under any other provision of federal or state law.
- (30) “Independent Educational Evaluation (IEE)” means an evaluation conducted by a qualified examiner not employed by the local school system which is responsible for the education of the child. An independent education evaluation is not necessarily a private evaluation.
- (31) “Individualized Education Program (IEP)” means a written statement for a child eligible for special education that is developed, reviewed, and/or revised in an IEP team meeting.
- (32) “Individualized Family Service Plan (IFSP)” means a written plan, developed in accordance with IDEA Part C, for providing early intervention and other services to a child eligible and the child’s family.
- (33) “Individualized Education Program Team (IEP team) (formerly M-Team)”, means a group of individuals responsible for determining the eligibility of a child and for developing or reviewing and/or revising an IEP for a child eligible for special education.
- (34) “Initial Referral” means a request for a comprehensive evaluation for special education and related services under IDEA.
- (35) “Least Restrictive Environment (LRE)” means:
  - (a) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children without disabilities; and
  - (b) Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (36) “Local School System,” also known as “Local Education Agency (LEA),” is a public board of education or other public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of Tennessee, or for a combination of

(Rule 0520-1-9-.01, continued)

- school districts or counties as are recognized in the state as an administrative agency for its public elementary or secondary schools.
- (37) “Native Language” means the following:
- (a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child;
  - (b) In all direct contact with a child (including evaluation), the language normally used by the child in the home or learning environment; and
  - (c) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).
- (38) “Paraprofessional” means an individual with at least a high school diploma or recognized equivalent that is employed in the provision of special education services under the supervision of a professional with appropriate credentials for their profession (licensed or certified according to Tennessee requirements) under 20 USC § 1111g(3). A paraprofessional shall meet the professional and employment standards set by the State Board of Education pursuant to TCA § 49-10-110(g)(2) [Traineeships and Fellowship] and this rule.
- (39) “Parent” means:
- (a) A natural or adoptive parent of a child;
  - (b) A guardian but not the State if the child is a ward of the State;
  - (c) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare);
  - (d) A surrogate parent who has been appointed in accordance with these regulations; or
  - (e) A foster parent may act as a parent if:
    - 1. The natural parent's authority to make educational decisions on the child's behalf has been extinguished under Tennessee law; and
    - 2. The foster parent:
      - (i) Has an ongoing, long term relationship with the child for more than one (1) year in duration;
      - (ii) Is willing to make the educational decisions required of parents under the IDEA; and
      - (iii) Has no interest that would conflict with the interest of the child.
- (40) “Participating Agency” means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under state or federal Law.
- (41) “Personally Identifiable Information” means:
- (a) The name of the child, the child's parent(s), or other family member(s);

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- (b) The address of the child;
  - (c) A personal identifier, such as the child's social security number or student number; or
  - (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
- (42) "Preschool Age" means the age range of three (3) through five (5) years.
- (43) "Procedural Safeguards" means the processes established by federal and state regulations to ensure that the mandates of IDEA are properly carried out by the State and the LEA.
- (44) "Profession or Discipline" means a specific occupational category that:
  - (a) Provides special education and related services to children with disabilities under IDEA Part B;
  - (b) Has been established or designated by the State;
  - (c) Has a required scope of responsibility and degree of supervision; and
  - (d) Is not limited to traditional occupational categories.
- (45) "Qualified Personnel" means individuals who have met State approved or recognized certification, licensure, registration, or other comparable requirements that apply to the area in which they are providing special education or related services.
- (46) "Related Services" means transportation and such developmental, corrective, and other supportive services as required to assist a child eligible for special education to benefit from special education. It includes speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.
  - (a) The terms used in this definition are defined as follows:
    - 1. Audiology includes:
      - (i) Identification of children with hearing loss;
      - (ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
      - (iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
      - (iv) Creation and administration of programs for prevention of hearing loss;
      - (v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and



(Rule 0520-1-9-.01, continued)

- (vi) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.
- 2. Counseling services are services provided by qualified social workers, psychologists, school counselors, or other qualified personnel.
- 3. Early identification and evaluation of disabilities in children means the implementation of a formal plan for identifying a disability as early as possible in a child's life.
- 4. Medical services are services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.
- 5. Occupational therapy means a service provided by a qualified occupational therapist and includes:
  - (i) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation; and,
  - (ii) Improving ability to perform tasks for independent functioning if functions are impaired or lost, and
  - (iii) Preventing, through early intervention, initial or further impairment or loss of function.
- 6. Orientation and mobility services:
  - (i) Are services provided to students who are blind or visually impaired by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
  - (ii) Includes teaching students the following, as appropriate:
    - (I) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
    - (II) To use the long cane to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
    - (III) To understand and use remaining vision and distance low vision aids; and
    - (IV) Other concepts, techniques, and tools.
- 7. Parent counseling and training is:
  - (i) Assisting parents in understanding the special needs of their child;
  - (ii) Providing parents with information about child development; and

(Rule 0520-1-9-.01, continued)

- (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- 8. Physical therapy is a service provided by a qualified physical therapist.
- 9. Psychological services include:
  - (i) Administering psychological and educational tests, and other evaluation and assessment procedures;
  - (ii) Interpreting evaluation and assessment results;
  - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  - (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral assessments;
  - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
  - (vi) Assisting in developing positive behavioral intervention strategies.
- 10. Recreation includes:
  - (i) Assessment of leisure function;
  - (ii) Therapeutic recreation services;
  - (iii) Recreation programs in schools and community agencies; and
  - (iv) Leisure education.
- 11. Rehabilitation counseling services are services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a child with a disability. The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, 29 USC § 706(8), 794, 794a, 794b.
- 12. School health services are services provided by a qualified school nurse or other qualified person.
- 13. Social work services in schools include:
  - (i) Preparing a social or developmental history on a child with a disability;
  - (ii) Group and individual counseling with the child and family;
  - (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(Rule 0520-1-9-.01, continued)

- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
  - (v) Assisting in developing positive behavioral intervention strategies.
- 14. Speech-language pathology services include:
  - (i) Identification of children with speech or language impairments;
  - (ii) Diagnosis and appraisal of specific speech or language impairments;
  - (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
  - (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
  - (v) Counseling children, and teachers regarding speech and language impairments.
- 15. Transportation includes:
  - (i) Travel to and from school and between schools;
  - (ii) Travel in and around school buildings; and
  - (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.
- (47) “Reevaluation” means a re-determination of a child's eligibility for special education and related services by an IEP team at least once every three (3) years or more frequently, if conditions warrant or if requested by the child's parent or teacher.
- (48) “SEA” is an acronym for State Education Agency.
- (49) “Special Education” means specially designed instruction, at no cost to the parents or student, to meet the unique educational needs of a child eligible for special education, including:
  - (a) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
  - (b) Instruction in physical education,
  - (c) Speech-language services, or any other related service, if the service is considered special education rather than a related service,
  - (d) Vocational education,
  - (e) Travel training.
  - (f) The terms in this definition are defined as follows:
    - 1. At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students who are nondisabled or to their parents as a part of the general education program.

(Rule 0520-1-9-.01, continued)

2. Physical education means the development of:
    - (i) Physical and motor fitness;
    - (ii) Fundamental motor skills and patterns; and
    - (iii) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
  3. Physical education includes special physical education, adapted physical education, movement education, and motor development.
  4. Specially-designed instruction means adapting, as appropriate to the needs of a child eligible for special education under this part, the content, methodology, or delivery of instruction:
    - (i) To address the unique needs of the child that result from the child's disability; and
    - (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards that apply to all children.
  5. Travel training is providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:
    - (i) Develop an awareness of the environment in which they live; and
    - (ii) Learn the skills necessary to move effectively and safely from place to place within that environment (such as in school, in the home, at work, and in the community).
- (50) “State Approved or Recognized Certification, Licensing, Registration, or other Comparable Requirements” means the requirements that the State legislature either has enacted or has authorized a state agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.
- (51) “Substantial Evidence” means beyond a preponderance of the evidence (34 CFR § 300.521).
- (52) “Supplementary Aids and Services” means aids, services and other supports that are provided in general education classes or other education-related settings to enable children eligible for special education to be educated with children without disabilities to the maximum extent appropriate.
- (53) “Surrogate Parent” means an individual appointed by the LEA to act as a surrogate for the parent in order to ensure that the rights of a child eligible for special education services under IDEA are protected.
- (54) “Tennessee’s Early Intervention System (TEIS)” means the name for the entity established by the Department to be responsible for the planning, implementation, supervision, monitoring, and technical assistance for the state-wide early intervention system for infants and toddlers with disabilities in an accordance with IDEA Part C.
- (55) “Transition” means the steps to be taken, in accordance with federal and state regulations for IDEA, to support the child’s purposeful and organized move from:

(Rule 0520-1-9-.01, continued)

- (a) One (1) program to another;
  - (b) The early intervention system to a preschool program; or
  - (c) School to “post-school” activities.
- (56) “Weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade less than 2.5 inches in length (18 USC § 930 (g) (2)).

0520-1-9-.02 RELATIONSHIP TO GENERAL EDUCATION PROGRAMS.

- (1) The goals of education described in Tennessee Administrative Rules, State Board of Education, 0520-1-3-.05 and Tennessee curriculum frameworks shall serve as the basis for developing educational programs. Each local school system must provide a variety of programs and services to meet the educational needs of all students including the needs of students eligible for special education.
- (2) Alternative programs must be provided when appropriate educational goals cannot be met in the general education program.
- (3) School improvement plans must include a continuum of educational strategies and programs to address the educational needs of all students, including the needs of students eligible for special education.
- (4) As a component of child find activities, general education programs within each LEA have specific responsibilities that include the following:
  - (a) Systematic screening of all children in specific grade levels residing within its jurisdiction;
  - (b) Reviewing the educational performance of children who are high risk;
  - (c) Providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.
- (5) The Department shall make available to the public reports on assessments of all children with the same frequency and in the same detail as it reports on the assessment of children without disabilities to include:
  - (a) The number of children with disabilities participating in:
    - 1. Regular assessments; and
    - 2. Alternate assessments.
  - (b) Reports to the public must include:
    - 1. The performance results of children eligible for special education if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.
    - 2. Aggregated data that include the performance of children with disabilities together with all other children; and
    - 3. Disaggregated data on the performance of children with disabilities.

## 0520-1-9-.03 ADMINISTRATION OF SPECIAL EDUCATION AND EARLY INTERVENTION SERVICES.

- (1) The Department is responsible for the following:
- (a) Ensuring that all children eligible for special education including those in private school, ages birth through the school year a student turns twenty-two (22), who are in need of special education and related services, regardless of the severity of their disability, are identified, located, and evaluated. Each local school system and state operated program shall:
    - 1. Develop and implement Child Find activities to ensure that all children, to include highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade, are identified, located and evaluated; and
    - 2. Develop and implement a practical method to determine which children with disabilities are receiving special education and related services.
  - (b) Ensuring an effective and smooth transition of children participating in early intervention programs to preschool programs by their third birthday. If the child's birthday occurs during the summer, the child's IEP team shall determine the date when services will begin, but no later than the beginning of the next school year.
  - (c) Ensuring a free appropriate public education is available to all children eligible for special education who reside in Tennessee, including those children who have been suspended or expelled for more than ten (10) school days. Also, ensuring a full educational opportunity goal to all children eligible for special education, birth through the school year the child turns twenty-two (22).
  - (d) Coordinating and supervising the provision of all publicly funded special education and related services for children eligible for special education in Tennessee and ensuring that such education and services meet state educational program standards.
  - (e) Approving the local school system's comprehensive plan for provision of all special education and related services.
  - (f) Monitoring and enforcing compliance with 0520-1-9 and applicable federal law in local education agencies and private facilities.
  - (g) Designing, implementing, and coordinating a comprehensive system of personnel development to ensure an adequate supply of qualified special education, general education and related services personnel that meet the requirements of applicable state and federal law.
  - (h) Implementing strategies to meet identified personnel needs including in-services and pre-service preparation to ensure that all personnel who work with children eligible for special education (both professional and paraprofessional personnel who provide special education services) have the skills and knowledge necessary to meet their needs. Strategies include:
    - 1. Preparation of general and special education personnel with the knowledge and collaborative skills needed to meet the needs of children eligible for special education;
    - 2. Preparation of professionals and paraprofessionals in the area of early intervention;
    - 3. Collaboration with institutions of higher education and other entities, which prepare personnel who work with children eligible for special education;

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4. Development of collaborative agreements with other states; and
  5. Work with institutions of higher education to prepare professionals and paraprofessional personnel who work with children eligible for special education to support quality professional development programs that meet state and local needs.
  6. Recruit, prepare, and retain qualified personnel.
  7. Provision for the joint training of parents and special education related services and general education personnel.
- (i) Collecting and analyzing data to determine if significant discrepancies exist in the rate of long-term suspensions and expulsions, graduation, and dropouts of children eligible for special education among local school systems when compared to such rates for children without disabilities in the local school system.
  - (j) Ensuring that children eligible for special education, including children in public and private institutions or other care facilities, are educated with children without disabilities, to the maximum extent appropriate.
  - (k) Providing a continuum of alternative placements to meet the unique needs of each child eligible for special education.
  - (l) Ensuring a method of providing services shall be established through an interagency agreement with other state agencies.
  - (m) Ensuring that an Interagency Agreement among the Department and other state agencies is implemented to allow a free and appropriate public education for children eligible for special education and related services.
- (2) Local school system duties. The local system shall demonstrate to the satisfaction of the Department that it does the following:
- (a) Identifies, locates, and evaluates all children who are suspected of having disabilities, including children attending non-public schools, regardless of the severity of their disabilities, and who may be in need of special education and related services. These services may be provided to children eligible for special education under early transition agreements who are not yet three (3) years of age. If the child's birthday falls during the summer months, the IEP team will determine when special education services begin but no later than the beginning of the next school year.
  - (b) Makes available a free appropriate public education to all children ages three (3) through the school year in which they reach age twenty-two (22) eligible for special education, including students who have been suspended or expelled for more than ten (10) school days in a school year.
  - (c) Includes children eligible for special education in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the State guidelines for participation of students with disabilities in state/district wide assessments.
  - (d) Ensures that children eligible for special education participating in early intervention programs shall experience a smooth and effective transition to preschool programs and, that by the third birthday, an IEP has been developed and implemented for the child. The local school system shall participate in the transition planning meeting at least ninety (90) days

(Rule 05201-1-9-.03, continued)

prior to the third (3<sup>rd</sup>) birthday of a child who maybe eligible for special education under these regulations.

- (e) Ensures that children eligible for special education who are enrolled in private schools or facilities by the local school system are provided special education and related services, in accordance with the IEP, at no cost to them or to their parents.
- (f) Ensures that children eligible for special education who are enrolled in private schools or facilities by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the district. No unilaterally placed private school children with disabilities have an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
- (g) Establish and have in effect policies, procedures, and programs that are consistent with 0520-1-9 for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations to include:
  - 1. Free appropriate public education;
  - 2. Child Find procedures;
  - 3. Evaluation/reevaluation and determination of eligibility procedures;
  - 4. IEP/IFSP procedures;
  - 5. Confidentiality procedures;
  - 6. Private school services procedures;
  - 7. Goals for performance of children eligible for special education through school improvement planning;
  - 8. Inclusion of children eligible for special education in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data;
  - 9. Interagency agreements to ensure FAPE for all children;
  - 10. Maintenance of effort.
- (h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.
- (i) Annually publicizes information regarding its special education programs and services and Child Find activities.
- (j) Ensures that both professional and paraprofessionals are included in service training annually.
- (k) Submits to the Commissioner of Education a comprehensive plan on or before July 1 with program narratives and assurances for the provision of special education and related services including the following:



(Rule 05201-1-9-.03, continued)

1. A census of children eligible for special education showing the total number and distribution of children within its jurisdiction who are provided special transportation.
2. An inventory of the personnel who provide instruction and other services to children eligible for special education and a listing of facilities;
3. A description of the extent to which Department standards governing special education services will be met including a goal of providing full educational opportunity to all children eligible for special education;
4. An assurance that IDEA funds will be used to supplement and not to supplant state and local funds and will be expended only for the excess cost of providing special education and related services to children eligible for special education;
5. An assurance that to the maximum extent appropriate, children eligible for special education, including children in public and private facilities, are educated with children without disabilities. Special classes, separate schooling or other removal of children eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily;
6. An assurance that a continuum of alternative placements is available to meet the needs of children eligible for special education and related services;
7. A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services is provided; and
8. An assurance that a free appropriate public education is available to all children eligible for special education from three (3) through the school year in which the student reaches twenty-two (22) years of age, including children who have been suspended or expelled for more than ten (10) school days in a school year.

(3) Specific funding requirements:

- (a) For the purpose of entitlement to academic program funds from the Basic Education Program (BEP), children eligible for special education shall be counted in the same manner as children without disabilities. To supplement the academic program funds earned and paid from the BEP, special education funds from the BEP shall be paid to local school systems for the purpose of providing special education and related services to children eligible for special education.
- (b) Special education funds from the BEP shall be allocated to each local public school system in an amount to be determined by applying the prescribed formula to the number of children eligible for special education identified and served during the preceding school year.
- (c) The local school system complies with maintenance of effort if it budgets at least the same total or per-capita amount from the combination of state and local funds as the local school system spent for that purpose from the prior year. The local school system may reduce the level of expenditures below the level for the proceeding year if the reduction is attributable the following:

(Rule 05201-1-9-.03, continued)

1. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower-salaried staff;
  2. A decrease in the enrollment of children with disabilities;
  3. The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:
    - (i) Has left the jurisdiction of the agency;
    - (ii) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
    - (iii) No longer needs the program of special education.
  4. The termination of costly expenditures for long-term high cost purchases.
- (d) Each local school system shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The division shall notify each local school system of its allocation of federal funds annually.
- (e) Two or more local school systems may submit a consolidated annual comprehensive plan, with the approval of the division, under the conditions of federal statute:
1. Those participating in a consolidated plan will be jointly responsible for implementing a free appropriate public education program in the participating local school system; and
  2. The consolidated plan must designate one of the local school systems as the fiscal agent for the plan.
- (f) Local school systems shall use IDEA funds for the excess costs of providing special education and related services to children eligible for special education. IDEA funds received by the local school system must not be commingled with state funds.
- (g) Local school systems must maintain records that demonstrate compliance with the excess cost, non-supplanting, and comparability requirements for at least five years after completion of the project described in the application.
- (h) For children eligible for special education unilaterally placed in private schools, the same proportionate amount that is spent on public school children eligible for special education from IDEA and preschool grants is allocated for the number of private school children eligible for special education within the local school system's jurisdiction. The preceding December 1 census count is used in calculating private and public school ratios to determine the proportionate amount.
- (4) Census.
- (a) Each local school system shall maintain an accurate record of all children eligible for special education ages three (3) through the school year a student turns twenty-two (22) years of age who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required.

(Rule 05201-1-9-.03, continued)

- (5) Evaluation of Programs and Services.
  - (a) Local school systems shall evaluate their special education programs and related services according to evaluative criteria issued by federal and state authorities.
- (6) Monitoring.
  - (a) Local school systems, state agencies and private schools shall be monitored on a periodic basis by the division to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations.
  - (b) The State shall provide technical assistance in self-evaluation, program planning and implementation of any necessary corrective action plans shall be provided.
- (7) Advisory Council for the Education of Students with Disabilities.
  - (a) The State has established and will continue to maintain an advisory council on the education of children with disabilities for special education as described in TCA § 49-10-105 and as required by 34 CFR § 300.650-300.653. The Governor appoints advisory council members.
  - (b) Membership.
    - 1. The advisory council shall be composed of a maximum of twenty-five (25) members appointed by the Governor, the membership shall be representative of the State population and composed of individuals involved in or concerned with the education of children eligible for special education, including;
      - (i) Parents of children eligible for special education;
      - (ii) Individuals with disabilities;
      - (iii) Teachers;
      - (iv) Representatives of institutions of higher education that prepare special education and related services personnel;
      - (v) State and local education officials;
      - (vi) Administrators of programs for children eligible for special education;
      - (vii) Representatives of other state agencies involved in the financing or delivery of related services to children eligible for special education;
      - (viii) Representatives of private schools and, if any, public charter schools;
      - (ix) At least one (1) representative of a vocational, community or business organization concerned with the provision of transition services; and
      - (x) Representatives from the state juvenile and adult correction agencies.
    - 2. A majority of the council must be individuals with disabilities or parents of children eligible for special education.

(Rule 05201-1-9-.03, continued)

3. The advisory council shall be composed of persons broadly representative of the community organizations interested in the disabled, professions related to the educational needs of the disabled, and the general public.
4. The governor shall appoint the members of the advisory council for three-year (3) terms. In making appointments to the advisory council, the governor shall strive to ensure that at least one (1) person serving on the council is sixty (60) years of age or older and that at least one (1) person serving on the council is a member of a racial minority.
5. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

(c) Advisory council functions.

1. The advisory council shall:
  - (i) Consider any problems presented to it by the Governor, the Commissioner, the State Board of Education or the Director of the Division of Special Education, and give advice thereon;
  - (ii) Comment publicly on any rules and regulations proposed for issuance pursuant to Tennessee Code Annotated, Title 49, Chapter 10, parts 1-6 regarding the education of children with disabilities;
  - (iii) By July 1 of each year, the advisory council shall make annual report to the Governor and General Assembly, and State Board of Education, and shall present its views of the progress or lack thereof made in special education by the State, its agencies and institutions, and its school districts during the preceding year. The annual report should include council activities and suggestions to the Department. This report must be made available to the public in a manner consistent with other public reporting requirements of IDEA Part B.
  - (iv) Advise the Department in developing evaluations and reporting on data to the U.S. Department of Education Secretary.
  - (v) Advise the Department in developing corrective action plans to address findings identified in federal monitoring reports; and
  - (vi) Advise the State Board of Education and the Department in developing and implementing policies relating to the coordination of services for children with disabilities.

(d) Advising on children eligible for special education in adult prisons.

1. The advisory council also shall advise on the education of children with disabilities who have been convicted as adults and incarcerated in adult prisons, even if the Governor (or another individual pursuant to state law) has assigned this authority to another state agency. The State may assign the general supervision responsibility for those students to a public agency other than the Department.

(e) Advisory council procedures.

1. The advisory council annually shall elect a chair and a vice chair.

(Rule 05201-1-9-.03, continued)

2. The Director of the Division of Special Education shall meet with and act as secretary to the advisory council, and within available personnel and appropriations, shall furnish meeting facilities and staff services for the advisory council.
3. The advisory council shall meet as often as necessary to conduct its business.
4. The advisory council shall keep official minutes on all council meetings and make the minutes available to the public on request.
5. All advisory council meetings and agenda must give adequate public notice of the meeting to afford interested parties a reasonable opportunity to attend.
6. Meetings must be open to the public.
7. Interpreters and other necessary services must be provided at council meetings for council members or participants. The State may pay for the services from federal funds.
8. The advisory council shall serve without compensation but the State must reimburse the council for reasonable and necessary expenses for attending meetings and performing duties. The State may use federal funds for this purpose.

0520-1-9-.04 CHILD FIND.

- (1) Each local school system shall develop and implement procedures for creating public awareness of special education programs and services. This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities. Any Child Find activities shall be comparable for children in private schools and facilities.
- (2) A notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents of the activities conducted by the local school system.
- (3) Any child suspected of having a disability may be referred to the local school system. All referrals shall be in writing to the school principal or special education administrator. The local school system shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be approved by the Division.

0520-1-9-.05 REFERRAL, INITIAL EVALUATION, AND REEVALUATION.

- (1) Each local school system shall develop an organized referral process, communicated to all professional personnel within the system, and parents, and persons within the community, for conducting initial evaluations or reevaluations of children who may be eligible for special education.
- (2) The referral process should include provisions to respond to initial requests for evaluations, securing informed parental consent for initial evaluations or reevaluations, identifying and convening IEP teams, conducting comprehensive individual evaluations, and if a determination of special education eligibility and a need for special education services is established, the development of an individual education program and provisions for placement of the child.
- (3) The standard timeframe from informed written parental consent to the placement of a child eligible for special education will be limited to forty (40) school days. A reasonable exception may be approved by the Department if, based on the unique needs of the child being evaluated, extra time is required. The granting of any exception will be based on the documented individual needs of the child.

(Rule 05201-1-9-.05, continued)

- (4) The child's parents, teachers and other qualified professional personnel, as appropriate, shall be a part of the assessment process to evaluate the child. The comprehensive evaluation shall be an in-depth assessment of all areas of suspected physical, cognitive and social/emotional disability. Attempts to gather all relevant educational, functional, and developmental information that adversely affects the child's educational performance and progress in the general curriculum shall be documented. Persons involved in the evaluation of the child shall provide documentation to the IEP team to review prior to determining the child's eligibility for special education services and in considering the child's educational needs when writing the IEP. If consent for an evaluation is refused by the parents, the local school system may pursue an evaluation through mediation and/or due process.
- (5) As part of the initial evaluation and, if appropriate, as part of any reevaluation, the IEP team shall:
  - (a) Review existing evaluation data on the child, including:
    1. Evaluations and information provided by the parents;
    2. Current classroom-based assessments and observations; and
    3. Observations by other teachers and related service providers.
  - (b) On the basis of the review of existing evaluation data and input from the child's parents, identify what additional data, if any, are needed to determine:
    1. Whether the child has a disability or in the case of a reevaluation of a child, whether the child continues to have a disability;
    2. The present levels of performance and educational needs of the child;
    3. Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
    4. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals written in the IEP and to participate, as appropriate, in the general curriculum.
- (6) Each local school system shall ensure that an individual evaluation of each child eligible for special education is conducted every three (3) years or more frequently if conditions warrant or if the child's parent or teacher requests a reevaluation.
- (7) On reevaluations, a meeting may not be required if members of the IEP team decide that no additional data is necessary. However, if additional data are needed or the parent(s) request an evaluation, the local school system shall obtain consent or document attempts to obtain consent to evaluate the child.
- (8) An IEP team meeting shall determine if the child continues to be eligible for special education. At this time, an IEP may be reviewed and/or revised and placement will be determined based upon the child's unique educational needs with the various options of services considered.
- (9) The parents shall receive a copy of all evaluation reports, the eligibility report and the IEP. At the triennial reevaluation, the evaluation report may consist of a summary of previous and current data and observations.
- (10) The IEP for the child shall include all the components within the federal statute. Children eligible for special education who are unilaterally placed in private schools by their parents shall have a service plan with goals and objectives for the service provided.

(Rule 05201-1-9-.05, continued)

- (11) No local school system shall provide special education or related services to a child eligible for special education until an initial IEP is completed and the determination of education programs and services has been agreed upon by the local school system and parent(s).
- (12) At a minimum, the local school system shall meet the following evaluation procedures:
  - (a) Tests and other evaluation materials used to assess a child:
    - 1. Are selected and administered so as not to be discriminatory on a racial or cultural basis; and
    - 2. Are provided and administered in the child's native language or other mode of communication, unless it is clearly not possible to do so.
  - (b) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills.
  - (c) A variety of evaluation tools and strategies are used to gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum (for a preschool child, to participate in appropriate activities) that may assist in determining:
    - 1. Whether the child is an eligible child with special education; and
    - 2. The content of the child's IEP.
  - (d) Any standardized tests that are given to a child have been validated for the specific purpose for which they are used and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test.
  - (e) If an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.
  - (f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
  - (g) Tests are selected and administered.
    - 1. Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude; or
    - 2. Achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (h) No single procedure is used as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
  - (i) The child is evaluated in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(Rule 05201-1-9-.05, continued)

- (j) In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- (k) The local school system uses technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (l) The local school system uses assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child.

0520-1-9-.06 DETERMINATION OF ELIGIBILITY.

- (1) Upon completing the evaluation/reevaluation, an IEP team must determine if the child is eligible for special education. The local school system must provide a copy of the evaluation/reevaluation report and determination of eligibility report to the parent.
- (2) A child may not be determined to be eligible if:
  - (a) The determinant factor for that eligibility determination is:
    - 1. Lack of instruction in reading or math; or
    - 2. Limited English proficiency.
  - (b) The child does not otherwise meet any eligibility criteria.
- (3) A local school system must evaluate a child with a disability before determining that the child is no longer eligible for special education. An evaluation is not required before the termination of a student's eligibility due to graduation with a regular high school diploma or exceeding the age eligibility for FAPE.
- (4) In interpreting the evaluation data, for the purpose of determining if a child is a child eligible for special education, each local school system shall:
  - (a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior; and
  - (b) Ensure that information obtained from all of these sources is documented and carefully considered.
  - (c) Ensure determination of eligibility shall be made by the IEP team.
- (5) An IEP must be developed for the child if a determination is made that the child:
  - (a) Has a disability; and
  - (b) Needs special education and related services.



## 0520-1-9-.07 SPECIFIC ELIGIBILITY STANDARDS.

State guidelines and standards will be established for determining program eligibility criteria, evaluation procedures, and evaluation participants. Revisions to the eligibility criteria must be recommended by a Task Force within the disability category. Upon recommendations from the Advisory Council for the Education of Students with Disabilities, the Division will submit the standards to the Commissioner. The Commissioner, after approval will submit to the State Board of Education for final review and approval. Copies of the eligibility criteria are available in the Division.

## 0520-1-9-.08 PROVISION OF FREE APPROPRIATE PUBLIC EDUCATION (FAPE).

- (1) A free appropriate public education shall be available to all children eligible for special education, ages three (3) through the school year the student turns twenty-two (22), including those children who have been suspended or expelled from school for more than ten (10) school days in a school year. To meet this obligation each school district shall:
  - (a) Identify, locate, and evaluate all children eligible for special education,
  - (b) Develop and implement Child Find activities to ensure that all children to include highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade, are identified, located and evaluated; and
  - (c) Provide services that address all of the child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.
- (2) Methods and Payments.
  - (a) Each district may use whatever state, local, federal, and private sources of support that are available to meet the requirements of 0520-1-9 and IDEA. (For example, if it is necessary to place a child eligible for special education in a residential facility, a local school system could use joint agreements between the agencies involved for sharing the cost of that placement.)
  - (b) Nothing in this part relieves an insurer or similar third (3<sup>rd</sup>) party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.
  - (c) In order to ensure that FAPE is provided to a child with a disability, parents shall not be required to use private insurance to pay for special education and related services. The LEA may access a parent's private insurance proceeds only if the parent provides informed consent. Each time the LEA proposes to access the parent's private insurance proceeds, it must:
    1. Obtain parental consent; and
    2. Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents (34 CFR § 300.142 (f)).
  - (d) A LEA may use public insurance benefit programs in which a child with a disability participates to provide or pay for services as permitted under the public insurance agency, except the LEA:
    1. May not require parents to incur an out of pocket expense such as payment of a deductible or copay amount incurred in filing a claim for services provided as a

(Rule 0520-1-9-.08, continued)

- related service (the LEA may pay the cost that the parent otherwise would be required to pay); and
- 2. May not use a child's benefits under a public insurance program if that use would:
  - (i) Decrease available lifetime coverage or any other insured benefit;
  - (ii) Result in the family paying for services that would otherwise be covered by the public insurance and that are required for the child outside of the time the child is in school;
  - (iii) Increase premiums or lead to the discontinuation of insurance; or
  - (iv) Risk loss of eligibility for home and community based waivers based on aggregate health related expenditures (34 CFR § 300.142 (e)).
- (e) A local school system may not delay implementing a child's IEP in any case in which the payment source for providing or paying for special education and related services to the child is being determined.
- (3) Residential placement.
  - (a) If an IEP team determines placement in a public or private residential program is necessary to provide special education and related services to a child eligible for special education, the program, including non-medical care and room and board, must be at no cost to the parents of the child or student.
- (4) Proper functioning of hearing aids.
  - (a) Each local school system shall establish and implement procedures to ensure that the hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
- (5) Full educational opportunity goal.
  - (a) Each local school system must establish and implement a goal of providing full educational opportunity to all children eligible for special education in the area served by the local school system.
- (6) Program options.
  - (a) Each local school system must ensure that its children eligible for special education have available to them the variety of educational programs and services available to children without disabilities in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, prevocational and career development, and vocational education.
- (7) Nonacademic services.
  - (a) Each local school system must take steps to provide nonacademic and extracurricular services and activities in the manner necessary to afford children eligible for special education an equal opportunity for participation in those services and activities.
  - (b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local school system, referrals to agencies that provide assistance to

(Rule 0520-1-9-.08, continued)

individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

(8) Facilities.

- (a) Facilities that serve students with disabilities must be comparable to facilities that serve students without disabilities.
- (b) Educational programs and facilities must be accessible where students with physical disabilities and students without disabilities are both in attendance.
- (c) Entrance to and from the facility must be accessible. If access is not visible at the front of the facility, signs must be present to indicate where parking and access to the facility for individuals with disabilities are available.

(9) Transportation.

- (a) Local school system shall provide eligible children with special transportation, where necessary.
  - 1. Children eligible for special education shall, whenever appropriate, be provided transportation along with children who are not disabled. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.
  - 2. Travel time for children eligible for special education shall not exceed the travel time for other children, provided that exceptions may be made on the recommendation of an IEP team.
  - 3. Vehicles used to provide special transportation must meet the requirements specified in the Rules, Regulations and Minimum Standards for the Governance of Tennessee Public Schools, 0520-1-5.
  - 4. Operators and attendants of vehicles providing special transportation shall be given special training concerned with the needs and special requirements of disabled children, except where parents are transporting their own children. Special attendants shall be provided when in the judgment of the IEP team such services are necessary.
  - 5. Contracting for special transportation is permissible provided that the operators, attendants, and vehicles used by the contractor meet minimum requirements established by the State Board of Education, except where the parents are transporting their own children.

(10) Physical education.

- (a) Physical education services, specially designed if necessary, must be made available to every child with a disability. Each child eligible for special education must be afforded the opportunity to participate in the general physical education program available to children without disabilities unless:
  - 1. The child is enrolled full time in a separate facility; or
  - 2. The child needs specially designed physical education, as prescribed in the child's IEP.

(Rule 0520-1-9-.08, continued)

- (b) If specially designed physical education is prescribed in a child's IEP, the local school system responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided through other public or private programs. The local school system responsible for the education of a child eligible for special education who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services.
- (11) Assistive technology.
  - (a) Each local school system shall make available to a child eligible for special education those assistive technology devices or assistive technology services, or both, if required as a part of the child's:
    - 1. Special education;
    - 2. Related services; or
    - 3. Supplementary aids and services.
  - (b) On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.
- (12) Extended school year services.
  - (a) Each local school system shall ensure that extended school year services are available as necessary to provide FAPE. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, that such services are necessary to provide FAPE.
  - (b) A local school system may not:
    - 1. Limit extended school year services to particular categories of disability; or
    - 2. Unilaterally limit the type, amount, or duration of those services.
  - (c) The term extended school year services are special education and related services that are provided to a child with a disability:
    - 1. Beyond the normal school year of the local school system;
    - 2. In accordance with the child's IEP;
    - 3. At no cost to the parents of the child or student; and
    - 4. Meet the standards of the Department.
- (13) FAPE requirements for students eligible for special education in adult prisons.
  - (a) The following requirements do not apply to students eligible for special education who are convicted as adults under state law and incarcerated in adult prisons:
    - 1. The requirements relating to participation of children with disabilities in general assessments, and

(Rule 0520-1-9-.08, continued)

2. The requirements relating to transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b) Modifications of IEP or placement.

1. If a student eligible for special education, is convicted as an adult under Tennessee law and incarcerated in an adult prison, the IEP team may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
2. The requirements of 34 CFR § 300.340(a) and 34 CFR § 300.347 relating to the definition of an IEP and the general requirements of 34 CFR § 300.350 relating to least restrictive environment (LRE) do not apply with respect to these modifications.

(14) Charter schools.

- (a) Charter schools, when applicable, must ensure compliance with IDEA.

0520-1-9-.09 COMPOSITION OF THE IEP TEAM.

(1) An IEP team for each child eligible for special education includes:

- (a) One (1) or both of the child's parents;
- (b) At least one (1) general education teacher of the child (if the child is, or may be, participating in the general education environment);
- (c) At least one (1) of the child's special education teacher(s) or certified/licensed service provider, or if the child has not been previously enrolled in school, a teacher or other specialist qualified to teach a child of his or her age in the area(s) of a child who is suspected of having special education needs;
- (d) At least one (1) representative of the local school system, other than the child's teacher, who:
  1. Is an administrator or designee;
  2. Is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;
  3. Is knowledgeable about the general curriculum; and
  4. Is knowledgeable about the availability of necessary resources to ensure implementation of the IEP;
- (e) An individual who can interpret the instructional implications of evaluation and assessment results, who may also fulfill another role on the team;
- (f) At the discretion of the parent or the local school system, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual shall be made by the party (parents or local school system) who invited the individual to be a member of the IEP; and

(Rule 0520-1-9-.09, continued)

- (g) The child when appropriate.
- (2) Requirement with respect to general education teacher.
  - (a) The general education teacher of a child eligible for special education, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP, including assisting in the determination of:
    - 1. Appropriate positive behavioral interventions and strategies for the child; and
    - 2. Supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child.
  - (b) A general education teacher may not be required to be a member of a child's IEP team, if the child has been placed in a separate school or is not participating in general education and no change is anticipated by any IEP team member.
- (3) Transition.
  - (a) If one (1) of the purposes of the meeting will be the consideration of the student's transition service needs or needed transition services, the local school system must invite a child eligible for special education of any age to attend his or her IEP meeting. If the student does not attend the IEP meeting, the local school system must take other steps to ensure that the student's preferences and interests are considered.
  - (b) For each student with a disability beginning at age fourteen (14) (or younger, if determined by the IEP team), and updated annually, a statement of the transition service needs of the student.
  - (c) For each student beginning at age sixteen (16) (or younger, if determined by the IEP team), a statement of needed transition services for the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.
  - (d) If an agency invited to send a representative to a meeting does not do so, the local school system shall take other steps to obtain participation of the other agency in the planning of any transition services, such as documented phone contacts.

#### 0520-1-9-.10 DEVELOPMENT OF THE IEP.

- (1) General and Special Considerations.
  - (a) Each local school system is responsible for initiating and conducting meetings to develop, review, and/or revise the IEP. In developing each child's IEP, the IEP team shall consider:
    - 1. The strengths of the child and the concerns of the parents for enhancing the education of their child;
    - 2. The results of the initial or most recent evaluation of the child; and
    - 3. As appropriate, the results of the child's performance on any general state or district-wide assessment programs.
  - (b) The IEP team shall:

(Rule 0520-1-9-.10, continued)

1. In the case of a child whose behavior impedes his or her learning or that of others, consider if appropriate strategies, including positive behavioral interventions, strategies, and supports, to address that behavior;
2. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
3. In the case of a child who has blindness or is visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines that it is not appropriate for the child;
4. Consider the communication needs of the child, and in the case of a child who is deaf or hearing impaired, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
5. Consider whether the child requires assistive technology devices and services.
6. If, in considering these factors, the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for a child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

(2) Initial IEP meetings.

- (a) Following the local school system's receipt of a written parental consent for evaluation, and consistent with the local school system's process to provide children eligible for special education with services and a special education placement within forty (40) school days from the receipt of written parental consent for evaluation system shall:
  1. Evaluate the child;
  2. Invite IEP team members to a meeting; and
  3. Determine whether the child meets Tennessee criteria for a child with a disability and requires special education and related services; and
  4. Develop an IEP for the child at this meeting or no later than thirty (30) days after determination of eligibility; and
  5. Determine educational placement based on the child's unique needs as specified in the IEP.
- (b) No local school system shall provide special education or related services to a child eligible for special education until an IEP has been developed and a placement has been made. A child eligible for special education may be temporarily placed in a special education program when additional information is needed to help determine the appropriate placement. Such a placement must be made in accordance with the following:
  1. The interim placement shall not exceed a thirty (30) day period;
  2. The IEP team recommends this interim placement; and

(Rule 0520-1-9-.10, continued)

3. Written parental consent for the interim placement is obtained by the local school system.
- (3) Review and revision of the IEP.
- (a) Upon the written request of any member, the IEP team shall be convened within ten (10) school days to review or revise the IEP or consider the child's placement.
  - (b) The IEP team must meet at least annually to:
    1. Review the child's IEP to determine whether the annual goals for the child are being achieved; and
    2. Revise the IEP as appropriate to address:
      - (i) Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
      - (ii) The results of any reevaluation, observations, and progress reports;
      - (iii) Information about the child provided to, or by, the parents;
      - (iv) The child's anticipated needs; and
      - (v) Any other matters.
  - (c) This IEP team shall meet all requirements in IEP team composition and development.
  - (d) The parent shall be given a copy of the IEP at no cost.
  - (e) Parents may be asked to sign the child's IEP on a voluntary basis. Parents shall not be required by a local school system to sign or otherwise consent to the IEP as a condition of any services to the child.
  - (f) If the parent objects to any part of the IEP, they may initiate a mediation or due process hearing to challenge one or more provisions of the IEP.
- (4) Implementation of the IEP.
- (a) The IEP must be implemented as soon as possible after completion. In the event agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford the parent or guardian time to request a hearing.
  - (b) At the beginning of each school year, each local school system shall have an IEP in effect for each child eligible for special education within its jurisdiction. Each local school system shall ensure that:
    1. An IEP is in effect before special education and related services are provided to a child eligible for special education;
    2. The IEP is implemented as soon as possible following the IEP team meeting.
  - (c) The child's IEP is accessible to each general and special education teacher and to each related or other service provider who is responsible for its implementation.



(Rule 0520-1-9-.10, continued)

- (d) Each teacher and provider shall be informed of their specific responsibilities relating to implementing the child's IEP and the specific accommodations, modifications and supports that must be provided for the child.
- (e) In the case of a child eligible for special education aged three (3) through five (5), an IFSP may serve as the IEP if it is consistent with these regulations and agreed to by the parents and local school system.

0520-1-9-.11 CONTENT OF THE IEP.

- (1) The IEP for each child eligible for special education must include:
  - (a) A statement of the child's present levels of educational performance to include:
    - 1. The child's strengths and abilities;
    - 2. How the child's disability affects the child's involvement and progress in the general curriculum; or
    - 3. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
  - (b) Statements presented in terms of measurable objectives to the extent possible and whatever test results are used to reflect the impact of the student's physical and/or mental characteristics on the student's performance.
  - (c) A direct relationship between the present levels of educational performance and other components of the IEP.
  - (d) A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
    - 1. Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (the same curriculum as for children without disabilities), or for preschool children to participate in appropriate activities; and
    - 2. Meeting each of the child's other educational needs that result from the child's disability.
  - (e) Strategies that are effective in realizing the child's goals and either measurable, intermediate steps (short-term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and, if appropriate, to revise the IEP consistent with the student's instructional needs.
  - (f) Short-term objectives or benchmarks for each annual goal. Short-term instructional objectives generally break the skills described in the annual goal down into discrete components. As an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short-term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child.

(Rule 0520-1-9-.11, continued)

- (g) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
  - 1. To advance appropriately toward attaining the annual goals;
  - 2. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - 3. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.
- (h) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the general program.
- (i) A statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and if the IEP team determines that the child will not participate in a particular state or district-wide assessment of student achievement (or part of an assessment), a statement of:
  - 1. Why that assessment is not appropriate for the child; and
  - 2. How the child will be assessed.
- (j) The projected date for the beginning of each special education and related service, supplemental aides and services, program modifications or supports for school personnel, and the anticipated frequency (range of time per session and number of sessions per week), location, and duration (number of days, weeks, and months of those services and modifications (including extended school year services); position and title (special education teacher, general education teacher, occupational therapist) or description of personnel to provide each service specified in the IEP.
- (k) A statement of how the child's progress toward the annual goals will be measured; and how (at least as often as parents are informed of the progress of children without disabilities) the child's parents will be regularly informed of the following:
  - 1. Their child's progress toward the annual goals; and
  - 2. The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.
- (l) Transition services.
  - 1. The IEP must include:
    - (i) For each student with a disability beginning at age fourteen (14) (or younger, if determined appropriate by the IEP team), and updated annually, a statement of the transition service needs of the student under the applicable components of the student's IEP that focus on the student's courses of study (such as participation in advanced-placement courses or a vocational education program); and
    - (ii) For each student beginning at age sixteen (16) (or younger, if determined appropriate by the IEP team), a statement of needed transition services for

(Rule 0520-1-9-.11, continued)

the student, including, if appropriate, a statement of the interagency responsibilities or any needed linkages.

2. Transition services are a coordinated set of activities for a student eligible for special education that:

- (i) Are designed within an outcome-oriented process, that promotes movement from school to post-school activities, including post secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (ii) Are based on the individual student's needs, taking into account the student's preferences and interests, and includes:
  - (I) Instruction;
  - (II) Related services;
  - (III) Community experiences;
  - (IV) The development of employment and other post-school adult living objectives; and
  - (V) The acquisition of daily living skills and functional vocational assessment, if appropriate.
- (iii) Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or related services, if required to assist a student eligible for special education to benefit from special education.

- (m) Transfer of rights.

1. Beginning at least one year before a student reaches the age of eighteen (18), the student's IEP must include a statement that the student and his or her parents have been informed of the student's rights under IDEA Part B, if any, that will transfer to the student on reaching the age of eighteen (18).
2. When a student with a disability reaches the age of eighteen (18) (except for a student with a disability who has been determined to be incompetent under state law):
  - (i) The local school district shall notify the individual and the parents of the transfer of rights; and
  - (ii) All rights accorded to parents under IDEA Part B and 34 CFR § Part 9 (FERPA) transfer to the student; and
  - (iii) All rights accorded to parents under IDEA Part B transfer to students who are incarcerated in an adult or juvenile institutions.

- (n) Agency responsibilities for transition services.

(Rule 0520-1-9-.11, continued)

1. If a participating agency, other than the local school system fails to provide the transition services described in the IEP, the local school system shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.
  2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students eligible for special education who meet the eligibility criteria of that agency.
- (o) IEP accountability.
1. Each local school system will provide special education and related services to an eligible child in accordance with the child's IEP and will make good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.
  2. The state or local school system is not prohibited from establishing its own accountability system regarding teacher, school, or agency performance.

0510-1-9-.12 LEAST RESTRICTIVE ENVIRONMENT (LRE) AND PLACEMENT.

- (1) General LRE requirements.
- (a) Each local school system shall develop procedures for the provision of special education and related services for children eligible for special education in the least restrictive environment.
  - (b) To the maximum extent appropriate, children eligible for special education, including children in public or private institutions or other care facilities, shall be educated with peers who are nondisabled.
  - (c) Special classes, separate schooling, or other removal of children eligible for special education from general education or preschool environment shall occur only if the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (2) Continuum of alternative placements.
- (a) Each local school system must make available a continuum of alternative placements to meet the needs of children eligible for special education and related services. This includes:
    1. Instruction in general classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and
    2. Provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with the general class placement.
- (3) Placement.
- (a) In determining the educational placement of a child eligible for special education, including a preschool child, the following requirements must be met:
    1. The placement decision must be:

(Rule 0520-1-9-.12, continued)

- (i) Made by an IEP team, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
    - (ii) Made in conformity with least restrictive environment provisions of the IDEA, including 34 CFR § 300.550-300.554.
  - 2. The child's placement must:
    - (i) Be determined at least annually;
    - (ii) Be based on the child's IEP;
    - (iii) Be as close as possible to the child's home; and
    - (iv) Not be based solely on the child's disability.
  - 3. Unless the IEP of a child eligible for special education requires some other arrangement, the child is educated in the school that he or she would attend if he or she did not have a disability.
  - 4. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services needed.
  - 5. A child eligible for special education is not removed from education in age-appropriate general classrooms or preschool settings solely because of needed modifications in the general curriculum.
  - 6. A child shall be educated with age appropriate peers, unless the IEP team determines on an individual basis that a different educational placement is necessary.
- (b) Children eligible for special education shall have an equal opportunity to participate with children who do not have disabilities in nonacademic and extracurricular services and activities that may include counseling services, athletics, transportation, health services, lunch, recess periods, recreational activities, special interest groups or clubs sponsored by the local school system, referrals to agencies that provide assistance to and employment of students, including both employment by the agency and assistance in making outside employment available.

0520-1-9-.13 TRANSITION FROM SPECIAL EDUCATION SERVICES.

- (1) A child shall no longer be eligible to receive special education and related services from a local school system when the IEP team determines one of the following:
  - (a) The child no longer meets the Tennessee criteria or no longer requires special education and related services;
  - (b) The child has been awarded a regular diploma; or
  - (c) The child's age is twenty-two (22) years, except that any child eligible for special education who turns twenty-two (22) between the commencement and the conclusion of the school year will continue to be a child eligible for special education for the remainder of the school year.

## 0520-1-9-.14 PROCEDURAL SAFEGUARDS.

Each LEA shall establish, maintain, and implement procedural safeguards to include information on surrogate parents, opportunity to examine records, independent educational evaluation, prior notice including notice of procedural safeguards, parental consent, mediation, due process hearing, discipline procedures, transfer of parental rights at age of majority, protections for children not yet eligible for special education, referral to an action by law enforcement or judicial authorities.

## (1) Surrogate parent.

- (a) Each local school system shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.
- (b) Each local school system shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:
  - 1. No parent can be identified;
  - 2. It is unable to locate a natural parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the natural parent or the guardian and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;
  - 3. If the child is a ward of the State (including a ward of the court or a state agency); or
  - 4. The educational rights of the parents have been terminated or transferred.
- (c) A surrogate parent, when representing the child's educational interests, has the same rights as those accorded to parents of children eligible for special education and children suspected of being eligible for special education.
- (d) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change may be made sooner, but without prejudice to any rights that the child and parent may have.
- (e) The surrogate parent shall continue to represent the child until one (1) of the following occurs:
  - 1. The child is determined by the IEP team no longer to be eligible for, or in need of special education or related services, except when termination from such programs is being contested;
  - 2. The parent, who was previously unknown, or whose whereabouts were previously unknown, becomes known;
  - 3. The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent;
  - 4. The local school system determines that the appointed surrogate parent no longer adequately represents the child;
  - 5. The child reaches age of majority eighteen (18) and is able to represent his or her

(Rule 0520-1-9-.14, continued)

- right to a free and appropriate public education.
- (f) Criteria for selection of surrogate parents.
1. A person selected as a surrogate parent may not be an employee of the state education agency, the local education agency, or any other agency that is involved in the education or care of the child.
    - (i) A person is not considered to be an employee of the local school system solely because he or she is paid by the local school system to serve as a surrogate parent.
    - (ii) A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.
  2. A public agency may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that provides non-educational care for the child provided they are able to meet the standards and perform the responsibilities as entered in 0520-1-9-.14(1)(g).
  3. Foster parents, selected by state agency as the custodian for a child, who have had a foster child eligible for special education for less than one (1) calendar year, may be appointed by a local school system to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent as entered in 0520-1-9-.14(1)(g). (Foster parents selected by a state agency as the custodian for a child, who have had a foster child eligible for special education for one (1) calendar year or more may act as a parent for their foster child if they meet the definition of parent in this rule.)
- (g) Standards and Responsibilities of a surrogate parent.
1. A surrogate parent must have no interest that would conflict with the interests of the child to be represented;
  2. A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children eligible for special education;
  3. A surrogate parent must participate in whatever training program might be offered to ensure that they will have knowledge and skills to provide adequate representation of the child;
  4. A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement, review of placement, and reevaluation, as appropriate;
  5. A surrogate parent must be acquainted with the child and his or her educational needs;
  6. A surrogate parent must attempt to ascertain the child's educational needs and concerns;
  7. A surrogate parent must respect the confidentiality of all records and information;
  8. A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and

(Rule 0520-1-9-.14, continued)

9. A surrogate parent must monitor the child's educational program and placement.
- (2) Prior Notice.
- (a) Written notice must be given to parents of a child suspected of having a disability or a child eligible for special education as appropriate at least ten (10) school days before the local school system:
    1. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of free appropriate public education to the child;
    2. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child; or
    3. Refuses to amend the child's records or proposes to destroy unneeded records in accordance with the confidentiality requirements of this rule.
  - (b) The ten (10) day notification time may be reduced if parents and the LEA agree or in the case of an incident of misconduct.
  - (c) Content of notice must include:
    1. A description of the action proposed or refused;
    2. An explanation of why the local school system proposes or refuses to take the action;
    3. A description of any options considered and the reasons why those options were rejected;
    4. A description of each evaluation procedure, test, record, or report used as a basis for the action;
    5. A description of any other factors relevant to the local school system's proposed or refused action;
    6. A statement that the parents of a child with a disability have protections under the procedural safeguards; and
    7. Sources for parents to contact to obtain assistance in understanding this notice.
  - (d) This required notice must be written in language understandable to the general public and provided in the native language or other mode of communication used by the parent unless it is clearly not feasible to do so. If this is the case, the local school system shall take steps to ensure that:
    1. The notice is translated orally or by other means in the parents' native language or other mode of communication;
    2. The parent understands the content of the notice; and
    3. There is written evidence that these requirements have been met.
- (3) Parent Invitation and Participation in Meeting.



(Rule 0520-1-9-.14, continued)

- (a) The local school system shall take steps to ensure that one or both of the parents of a child eligible for special education are present at each meeting of the IEP team or are provided the opportunity to participate, including:
    - 1. Notifying parents at least ten (10) school days before the IEP meeting to ensure that they will have an opportunity to attend. When notifying parents of an IEP meeting related to an incident of misconduct the notification time may be reduced to as few as twenty-four (24) hours.
    - 2. Scheduling the meeting at a mutually agreed upon time and place; and
    - 3. Stating in the written notice provided to parents:
      - (i) The purpose, time and location of the meeting;
      - (ii) The persons who are expected to be in attendance; and
      - (iii) That the parents may bring other persons to the meeting if they choose to do so.
    - 4. If the purpose of the meeting is the consideration of transition services for a student, the notice must also:
      - (i) Indicate this purpose;
      - (ii) Indicate that the agency will invite the student; and
      - (iii) Identify any other agency that will be invited to send a representative.
  - (b) If neither parent can attend an IEP team meeting, the local school system shall use other methods to ensure parent participation, including individual or conference telephone calls.
  - (c) The local school system shall take whatever action is necessary to ensure that the parent understands the proceedings at an IEP team meeting, including the arrangements for an interpreter for parents who are deaf or whose native language is other than English.
  - (d) An IEP team meeting may be conducted without the parent in attendance provided that another method for parent participation is attempted and the local school system has documented their attempts to arrange a meeting at a mutually agreed upon time and place such as:
    - 1. Copies of correspondence sent to the parents and any response received.
    - 2. Detailed records of visits made to the parent's home or place of employment and the results of those visits.
  - (e) Meetings do not refer to nor include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. Also, a meeting does not refer to nor include preparatory activities that school personnel engages in to develop a proposal or response to a parent proposal that will be discussed at a future meeting.
- (4) Procedural safeguards notice.
- (a) A copy of the procedural safeguards available must be given to the parents, at a minimum:

(Rule 0520-1-9-.14, continued)

1. Upon initial referral for evaluation;
  2. Upon each notification of an IEP meeting;
  3. Upon reevaluation of the child; and
  4. Upon receipt of a request for a due process hearing.
- (b) The content of the notice must include a full explanation of the procedural safeguards available to include:
1. Placement of children by parents in private schools when FAPE is at issue;
  2. Access to educational records;
  3. Independent educational evaluation;
  4. Prior written notice;
  5. Parental consent;
  6. Opportunity to present complaints and to initiate mediation and/or a due process hearing;
  7. The child's placement during pendency of due process proceedings;
  8. Procedures for students who are subject to placement in an interim alternative educational settings;
  9. Procedures for mediation;
  10. Procedures for requesting a due process hearing including requirements of disclosure of evaluation results and recommendations;
  11. Civil actions;
  12. Attorneys' fees; and
  13. The complaint procedures with a description of how to file and the timelines.
- (5) Parental consent.
- (a) Informed parental consent must be obtained by each local school system prior to:
1. Conducting an initial evaluation or reevaluation;
  2. Initial placement of a child eligible for special education in a special education program; and
  3. Disclosing personally identifiable information to unauthorized persons, except for directory information where reasonable notice of disclosure is provided and the parent has not objected.
- (b) Consent for initial evaluation may not be construed as consent for initial placement.

(Rule 0520-1-9-.14, continued)

- (c) Parental consent is not required before:
    - 1. Reviewing existing data as part of an evaluation or a reevaluation; or
    - 2. Administering a test or other assessment that is administered to all children unless consent is required of parents of all children.
  - (d) Parents may refuse consent for evaluation or reevaluation but the local school system may continue to pursue those evaluations by using due process procedures.
  - (e) Informed parental consent need not be obtained for reevaluation if the local school system documents that it has taken reasonable measures to obtain consent and the parent has failed to respond.
- (6) Independent education evaluation (IEE).
- (a) Each local school system shall develop procedures for providing an independent educational evaluation (IEE) at the request of parents. This procedure shall be approved by the Department.
  - (b) The parents have the right to an independent educational evaluation (IEE) at public expense if they disagree with the evaluation provided by the local school system. The IEE must be provided at public expense and without unnecessary delay unless the local school system:
    - 1. Initiates a hearing to show its evaluation is appropriate; or
    - 2. Demonstrates in a due process hearing that the evaluation presented by the parent(s) did not meet the local school system's evaluation criteria. If this is submitted, the parent(s) still have the right to an IEE, but not at public expense.
  - (c) Upon request for an IEE, the local school system shall provide the parents information about where an IEE may be obtained and the evaluation criteria to be used.
  - (d) If a hearing officer requests an independent educational assessment as a part of a due process hearing, it shall be at public expense.
  - (e) Whenever an IEE is obtained, the criteria under which the assessment is obtained, including the location of the assessment and the qualifications of the examiner(s), must be the same as the criteria that the local school system uses when it initiates an assessment.
  - (f) The results of an IEE must be considered by the local school system, if the IEE meets local school system criteria, in any decision made with respect to the provisions of FAPE to the child and may be presented as evidence at a due process hearing regarding the child.
- (7) Confidentiality of information.
- (a) Each school district must permit parents to inspect and review any records directly relating to their children, which are maintained by the school district or by a party acting for the school district.
  - (b) Local school systems shall comply with a parental request to inspect and review all education records relating to the identification, evaluation, and placement of their child and the provision of FAPE. This request shall be completed, without unnecessary delay and before

(Rule 0520-1-9-.14, continued)

any IEP meeting or hearing, in no case more than forty-five (45) days after the request has been received (34 CFR § 300.562).

- (c) Parental rights to inspect and review records include:
  - 1. The right to a response from the local school system to reasonable requests for explanations and interpretations of the records;
  - 2. The right to request the local school system to provide copies of the records indicated in 0520-1-9-.14(7) containing the information, if failure to provide any copies would effectively prevent the parents from exercising the right to inspect and review the records; and
  - 3. The right to have a representative of the parent (authorized in writing) inspect and review the records.
- (d) The local school system may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable Tennessee law governing such matters as guardianship, separation and divorce and has been provided a copy of the applicable document.
  - 1. The local school system must keep a record of parties obtaining access to education records (except access by parents and authorized employees of the board), including the name of the party, the date access took place, and the purpose of the authorized use.
  - 2. If any education record includes information on more than one child, the parent of a child eligible for special education or a child suspected of being eligible for special education shall have the right to inspect and review only the information relating to his or her child or to be informed of that specific information.
- (e) The local school system shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by the local school system.
- (f) The local school system may charge a fee for copies of records which are made for parents under this rule if the fee does not effectively prevent the parents from exercising their right to inspect and review those records but in no event shall a local school system charge more than the actual cost of the copies. Nor shall a local school system charge a fee to search for or to retrieve information under this rule.
- (g) A parent who believes that information in the education records collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of the child may request the local school system to amend the information.
  - 1. The local school system, upon receiving a request from a parent shall decide, within ten (10) days of its receipt of the request, whether to amend the information as requested. If the system decides to refuse to amend the information, it shall inform the parent of the refusal and advise the parent of the right to a hearing.
    - (i) The local school system shall, on request, provide an opportunity for a 34 CFR § Part 99 (FERPA) hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

(Rule 0520-1-9-.14, continued)

- (ii) If, as a result of the 34 CFR § Part 99 (FERPA) hearing, it is decided that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the local school system shall amend the information accordingly and provide written notice to the parents.
  - (iii) If, as a result of the hearing, it is decided that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, the local school system shall inform the parents of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the local school system.
  - (iv) Any explanation placed in the records of the child (1) must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by this agency and (2) if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.
- (h) Except for the disclosure of directory information where reasonable notice of disclosure is provided and the parent has not objected, written parental consent shall be obtained before personally identifiable information is used for any purpose other than meeting a requirement under this rule or is disclosed to anyone for the purposes of the activities described in this rule.
  - 1. Local school systems shall not release information from education records to participating agencies without parental consent unless authorized to do so under 34 CFR § Part 99 (FERPA).
  - 2. Local school systems shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages and shall designate one (1) person to assume responsibility for ensuring the confidentiality of any personally identifiable information.
  - 3. Any person collecting or using personally identifiable information shall receive training or instruction regarding these rules. Local school systems must maintain, for public inspection, a current listing of the names and positions of employees who may have access to personally identifiable information.
- (i) Local school systems shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child and shall have such information destroyed at the request of the parents.
- (j) Information contained in the IEP or individual assessment shall not be available to the public but must be available to the professional educational staff and related service providers in need of such information in connection with the responsibilities established by this rule consistent with the requirements of existing federal and state laws governing such information.
- (k) These rules extend to any records or other information collected or maintained by any agency, organization or person in connection with an individual evaluation.
- (l) A parents' rights brochure will be given to parents at the time of referral for a comprehensive evaluation. The brochure will also be given to parents at the initial IEP team meeting and at all subsequent meetings.

(Rule 0520-1-9-.14, continued)

(8) Complaint procedures.

- (a) An Administrative Complaint to the Division regarding an LEA program:
  - 1. Must be in writing;
  - 2. Should be addressed to the Division;
  - 3. Must be signed by the person making the complaint (anonymous complaints will not be processed);
  - 4. Should be clear and concise in identifying the concern or the alleged violations; and
  - 5. Need not identify the specific law or regulation involved.
- (b) The primary responsibility for the investigation and resolution of complaints is with the Division. A staff member will be assigned to conduct an impartial review of the facts and to recommend an objective resolution of the complaint based on the Division's procedures.
- (c) Any complaint must be investigated and resolved within sixty (60) calendar days from receipt of the written complaint. The sixty (60) day timeline may be extended by the Department or the Division for exceptional circumstances such as:
  - 1. The complexity of the issues;
  - 2. The need for additional information;
  - 3. The unavailability of any necessary party;
  - 4. The request and agreement of both parties for reasons such as illness, administrative need, or early complaint resolution; or
  - 5. Additional complaint issues submitted by the same person making the complaint if the issues are different.
- (d) The complainant and the district administrator will be notified in writing of an extension in the timeline and the reasons for it.
- (e) The complainant must allege a violation of a requirement of a state or federal law or regulation governing educational services to children eligible for special education, provide specific information to support the allegation(s), and must sign the complaint.
- (f) Individuals or organizations filing verbal complaints are sent a complaint form for completion and signature.
- (g) If the Division determines that no violation was committed, a letter to the complainant with a copy to the local school system will be sent explaining that the concerns are not sufficient to merit an investigation.
- (h) If the Division determines a violation of a requirement of state or federal law are met, the Division must immediately contact the local school system to seek an early resolution of the issues unless the person making the complaint has filed for a due process hearing on the same issue(s). The investigation will then be tolled until a decision in the due process hearing has been made.

(Rule 0520-1-9-.14, continued)

- (i) To initiate an early resolution, the local school system, within ten (10) calendar days of receipt of the written complaint, should provide a record of contact with the parent, a statement of the proposed resolution and whether the parent has agreed to the resolution.
  - (j) If the local school system states that the complaint has been resolved, the Division may contact the parents to verify the resolution and write a letter of findings to both parties.
  - (k) If the complaint is not resolved within ten (10) calendar days or the complainant does not agree that resolution has occurred, the complaint must be investigated.
  - (l) To investigate the complaint the Division may use any of the following procedures to resolve the complaint:
    - 1. Request copies of existing documents;
    - 2. Request written answers to written questions;
    - 3. Telephone or personal interviews with officials, employees, students, parents or other relevant persons.
    - 4. Request a corrective action plan; and
    - 5. Other procedures as deemed appropriate.
  - (m) The Division must provide an opportunity to the complainant to:
    - 1. Submit any additional information regarding the allegations;
    - 2. Provide written or oral comments on the information provided by the local school system and the parent.
  - (n) After completion of the investigation, a decision will be rendered and written to address each allegation in the complaint. This document will contain the facts of the investigation and the reasons for the final decision. Both parties will receive copies of this issuance of findings.
  - (o) Remedies for denial of appropriate services.
    - 1. In resolving a complaint in which it has found a failure to provide appropriate services, the Department shall address:
      - (i) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and
      - (ii) Appropriate future provision of services for all children with disabilities.
- (9) Mediation.
- (a) Parents and LEAs may participate in special education mediation to resolve disputes involving identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
  - (b) Requirements.
    - 1. The mediation process.

(Rule 0520-1-9-.14, continued)

- (i) Is voluntary on the part of the parties;
    - (ii) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under IDEA Part B; and
    - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
  - 2. Selection of Mediators.
    - (i) The Department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
    - (ii) If a mediator is not selected on a random (e.g., a rotation) basis from the Department's list of mediators, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
    - (iii) Once a mediator is selected, either party may reject a specific mediator.
  - 3. The Department shall bear the cost of the mediator and the administrative cost for the mediation. The LEA shall be responsible for providing appropriate meeting space.
  - 4. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
  - 5. An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.
  - 6. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process. A mediator may not be subpoenaed as a witness in a due process hearing for a child for whom he or she was the mediator.
  - 7. When the parents and LEA agree to mediate a dispute, a "Request for Mediation" form shall be completed and signed by both parties and forwarded to the Division.
- (c) Impartiality of mediator.
- 1. An individual who serves as a mediator must not be an employee of:
    - (i) Any LEA or any State agency involved in the provision of special education or related services to the child whose program is in dispute; or
    - (ii) The Division that is providing direct services to a child who is the subject of the mediation process.
  - 2. A person who otherwise qualifies as a mediator is not an employee of a local school system or the Division solely because he or she is paid by the agency to serve as a mediator.



(Rule 0520-1-9-.14, continued)

3. The individual who serves as mediator must not have a personal or professional conflict of interest.

(d) Mediator training.

1. All mediators shall be trained as Tennessee Supreme Court Rule 31 Family Case mediators.
2. Additional training in state and federal special education laws and regulations shall be provided annually or on an as needed basis.

(e) Meeting to encourage mediation.

1. The Department may establish procedures to require parents or LEAs who elect not to use the mediation process to meet, at a time and location convenient to the parents and LEAs, with a disinterested party who:
  - (i) Is under contract with a parent training and information center or community parent resource center in the State or an appropriate alternative dispute resolution entity; and
  - (ii) Would explain the benefits of the mediation process, and encourage the parents and LEAs to use the process.
2. A parent's or LEA's right to a due process hearing may not be denied or delayed because either party fails to participate in this meeting.

(10) Due Process Hearing.

(a) Impartial Due Process Hearing.

1. Parents and LEAs have the right to an impartial due process hearing in order to settle disputes regarding the provision of a free appropriate public education to a child eligible for special education or a child suspected to be eligible for special education.
2. A parent or the LEA may initiate a hearing on matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. Hearing matters include when a child is or is about to be:
  - (i) Denied identification, evaluation, entry or continuance in a program of special education appropriate to his or her condition and needs;
  - (ii) Provided special education or related services which are inappropriate to his or her condition and needs;
  - (iii) Denied needed special education or related services;
  - (iv) Provided with special education or other education which is insufficient in quantity to satisfy the requirements of the law;
  - (v) Provided with special education or other education to which he or she is entitled only by units of government or in situations which are not those having the primary responsibility for providing the services in question;

(Rule 0520-1-9-.14, continued)

- (vi) Assigned to a program of special education when he or she is not eligible for special education;
  - (vii) Denied his or her rights by having data collected, maintained or used which the parent believes to be inaccurate, misleading or otherwise in violation of the privacy rights of the child;
  - (viii) Denied an evaluation requested by a parent;
  - (ix) Improperly identified; or
  - (x) Placed in a setting, which is not the least restrictive environment.
- 3. When a hearing is initiated the LEA shall inform the parent(s) of the availability of mediation.
- 4. The LEA shall inform the parent(s) of any free or low-cost legal and other relevant services available in the area and document the information given if:
  - (i) The parent requests the information; or
  - (ii) The parent or the LEA initiates a due process hearing
- 5. A due process hearing shall be conducted by the Division.
- 6. The parent of a child with a disability or the attorney representing the child shall provide notice (which must remain confidential) to the LEA in a request for a hearing. The notice required must be in writing and include:
  - (i) The name of the child;
  - (ii) The address of the residence of the child;
  - (iii) The name of the school the child is attending;
  - (iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
  - (v) A proposed resolution of the problem to the extent known and available to the parents at the time.
- (b) Right to due process hearing.
  - 1. A LEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required.
- (c) Impartial hearing officer.
  - 1. A hearing may not be conducted:
    - (i) By a person who is an employee of the state agency or the LEA that is involved in the education or care of the child; or

(Rule 0520-1-9-.14, continued)

- (ii) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.
- 2. A person who otherwise qualifies to conduct a hearing is not an employee of the Division solely because he or she is paid by the Department to serve as a hearing officer.
- 3. The Department shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
- 4. All hearing officers shall be trained in the following areas:
  - (i) State and federal special education laws and regulations;
  - (ii) The Uniform Administrative Procedures Act;
  - (iii) Clear writing and proper grammatical form;
  - (iv) Conducting hearings in an orderly and controlled manner;
  - (v) Rendering decisions in an impartial manner, extracting pertinent data from a variety of sources, and arriving at an appropriate decision;
  - (vi) The nature of physical and mental impairments and special education programming;
  - (vii) Diagnostic instruments and procedures; and
  - (viii) A professional demeanor and objectivity.
- (d) Hearing rights.
  - 1. Any party to a due process hearing has the right to:
    - (i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
    - (ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
      - (I) Requests for the attendance of witnesses shall be made to the director of the LEA or his designated representative who shall inform the hearing officer of the request.
      - (II) Subpoenas to compel the attendance of witnesses and the production of documentary evidence shall be issued by the hearing officer.
      - (III) LEAs shall ensure the availability of all LEA employees called as witnesses.
    - (iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;

(Rule 0520-1-9-.14, continued)

- (iv) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
  - (v) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- 2. Additional disclosure of information.
  - (i) At least five (5) business days prior to a due process hearing each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the due process hearing.
  - (ii) A hearing officer may bar any party that fails to comply with 0520-1-9-.14(10)(d)2(i) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
  - (iii) Parents involved in hearings must be given the right to:
    - (I) Have the child who is the subject of the hearing present; and
    - (II) Open the hearing to the public.
  - (iv) The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.
  - (v) Findings of fact and the final decision of the hearing officer shall be made to the Division, the Advisory Council for Students with Disabilities, and to the public after deleting any personally identifiable information.
- (e) A decision made in a due process hearing is final, except that any party involved in the hearing has the right to bring a civil action with respect to the complaint.
- (f) Timelines and convenience of hearings and reviews.
  - 1. The Division shall ensure that not later than forty-five (45) days after the receipt of a request for a hearing:
    - (i) A final decision is reached in the hearing; and
    - (ii) A copy of the decision is mailed to the LEA, the parents, and the Division.
  - 2. A hearing officer may grant specific extensions of time beyond forty-five (45) days at the request of either party.
  - 3. Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.
  - 4. Unless a decision is rendered within forty-five (45) days after the receipt of a request for a hearing, the hearing officer will not be reimbursed, except in extraordinary circumstances as determined by the Commissioner. In addition, if no decision has been rendered within forty-five (45) days after the receipt of a request for a hearing, the party requesting the hearing shall be given the following options:
    - (i) A new hearing conducted by a different hearing officer; or

(Rule 0520-1-9-.14, continued)

- (ii) A different hearing officer to review the existing transcript and evidence and render a decision on the record.
- (g) Civil action.
  - 1. Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with TCA § 4-5-322 and 49-10-601 or in a district court of the United States without regard to the amount in controversy.
  - 2. In any action brought under (g)(3) of this section, the court:
    - (i) Shall receive the records of the administrative proceedings;
    - (ii) Shall hear additional evidence at the request of a party; and
    - (iii) Basing its decision on the preponderance of the evidence, the court shall grant the relief that the court determines to be appropriate.
  - 3. The district courts of the United States have jurisdiction of actions brought under section 615 of the IDEA without regard to the amount in controversy (34 CFR § 300.512).
  - 4. Rule of construction.
    - (i) Nothing in this section restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the IDEA, the due process procedures must be exhausted to the same extent as would be required had the action been brought under section 615 of the IDEA.
- (h) Attorneys' fees.
  - 1. In any action or proceeding brought under section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.
  - 2. Funds under IDEA Part B may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA.
    - (i) This does not preclude a LEA from using funds under IDEA Part B for conducting an action or proceeding under section 615 of the IDEA.
  - 3. A court awards reasonable attorneys' fees consistent with the following:
    - (i) Determination of amount of attorneys' fees.
      - (I) Fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished.

(Rule 0520-1-9-.14, continued)

- (II) No bonus or multiplier may be used in calculating the fees awarded.
- (ii) Prohibition of attorneys' fees and related costs for certain services.
  - (I) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:
    - I. The offer is made at any time more than ten (10) days before the proceeding begins;
    - II. The offer is not accepted within ten (10) days; and
    - III. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
  - (II) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for due process hearing.
- (iii) Exception to prohibition on attorneys' fees and related costs.
  - (I) The court may award attorneys' fees and related costs to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- (iv) Reduction of amount of attorneys' fees. The court may reduce the amount of the attorneys' fees awarded if the court finds that:
  - (I) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
  - (II) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
  - (III) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
  - (IV) The attorney representing the parent did not provide to LEA the appropriate information in the due process complaint.
- (v) Exception to reduction in amount of attorneys' fees.
  - (I) These provisions do not apply in any action or proceeding if the court finds that the Department or LEA unreasonably protracted the final resolution of the action or proceeding or if there was a violation of section 615 of the IDEA.

(Rule 0520-1-9-.14, continued)

(i) Child's status during proceedings.

1. With the exception of forty-five (45) day placements in interim alternative educational settings for weapons, drugs, or a child with a disability who has been determined dangerous to himself and/or others by a hearing officer, during the pendency of any due process hearing, unless the State or LEA and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
2. If the due process hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
3. If the decision of a hearing officer in a due process hearing conducted by the Division agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or LEA and the parents for purposes of the child's placement during proceedings.

(j) LEA Procedures and Responsibilities.

1. When the parent requests a hearing, the director of schools shall contact the parent to establish a suitable time (morning, afternoon, or evening), two possible dates for the hearing to be held; and whether the hearing will be closed or open.
2. When hearing parameters are complete the LEA shall immediately contact the Division.
3. A request for a hearing by the LEA will be made in writing to the Division, giving a brief statement of facts supporting the grounds for the hearing. The system shall allege one or more of the following:
  - (i) The parent refuses to consent to:
    - (I) Initial evaluation and/or re-evaluation; or
    - (II) Initial placement in a special education program.
  - (ii) The parent disagrees with the LEA's evaluation and is requesting an independent educational evaluation at public expense, over the objection of the LEA.
4. The LEA shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing,\* with the exception of the services of the hearing officer.

\*Expenses for the services of a court reporter, the original copy of the transcript and one copy for the parent will be reimbursed on submission of appropriate documentation to the Division. Court reporter fees will not, however, be reimbursed when transcripts are not released within fifteen (15) days after the date of the hearing, except in extraordinary circumstances, as determined by the hearing officer.

5. The LEA shall provide a typed transcript of the proceedings to the following:
  - (i) The hearing officer (original copy); and

(Rule 0520-1-9-.14, continued)

- (ii) The parent.

0520-1-9-.15 DISCIPLINE PROCEDURES.

- (1) Authority of school personnel.

- (a) School personnel may order:

- 1. To the extent removal would be applied to children without disabilities, the removal of a child eligible for special education from their current placement for not more than ten (10) consecutive school days for any violation of school rules, and additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement);
    - 2. After a child with a disability has been removed from his or her current placement for more than ten (10) school days in the same school year, during any subsequent days of removal, the local school system must provide services to the extent required to allow the child eligible for special education to progress in the general curriculum and to make progress toward IEP goals and objectives.
    - 3. A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without disabilities would be subject to discipline, but for not more than forty-five (45) days, if:
      - (i) The child possesses a dangerous weapon at school or at a school function under the jurisdiction of the State or a local school system; or
      - (ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of the state or local school system.

- (b) Within ten (10) business days after either first removing the child for more than ten (10) school days in a school year or commencing a removal that constitutes a change of placement:

- 1. If the local school system did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal, the local school system shall convene an IEP meeting to develop an assessment plan;
      - 2. If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior;
      - 3. As soon as practicable after completing the assessments required by the plan, the local school system shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

- (c) If subsequently, a child eligible for special education who has a behavioral intervention plan and who has been removed from the current educational placement for more than ten (10) school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team



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members believe that modifications are needed, the team shall meet to modify the plan and its implementation to the extent the team determines necessary.

- (d) For purposes of this section, the following definitions apply:
  - 1. Controlled substance is a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c));
  - 2. Illegal drug:
    - (i) Is a controlled substance; but
    - (ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that IDEA or under any other provision of federal law.
  - 3. Weapon is a device, instrument, material, or substance, animate or inanimate, that is used for or readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade less than 2.5 inches in length (18 USC § 930 (g)(23)).
- (2) A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing:
  - (a) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
  - (b) Considers the appropriateness of the child's current placement;
  - (c) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - (d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of 34 CFR § 300.522(b).
  - (e) As used in this section, the term "substantial evidence" means beyond a preponderance of the evidence.
- (3) Change of placement for disciplinary removals.
  - (a) For purposes of removal of a child with a disability from the child's current educational placement a change of placement occurs if:
    - 1. The removal is for more than ten (10) consecutive school days; or
    - 2. The child is subjected to a series of removals that constitute a pattern because they cumulate to more than ten (10) school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

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- (4) FAPE for children suspended or expelled from school.
- (a) A local school system need not provide services during periods of removal to a child eligible for special education who has been removed from their current placement for ten (10) school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.
  - (b) In the case of a child eligible for special education who has been removed from their current placement for more than ten (10) school days in that school year, the local school system, for the remainder of the removals, must:
    - 1. Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and advance toward achieving the goals set out in the child's IEP, if the removal is:
      - (i) Under the school personnel's authority to remove for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement;
    - 2. Provide services in the appropriate interim alternative educational setting, if the removal is for drug or weapons offenses or based on a hearing officer's determination that maintaining the current placement of the child is substantially likely to result in injury to the child or to others if he or she remains in the current placement.
  - (c) School personnel, in consultation with the child's special education teacher, shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and advance toward achieving the goals set out in the child's IEP if the child is removed under the authority of school personnel for not more than ten (10) consecutive school days as long as that removal does not constitute a change of placement.
  - (d) The child's IEP team shall determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and advance toward achieving the goals set out in the child's IEP if the child is removed because of behavior that has been determined not to be a manifestation of the child's disability.
- (5) Determination of setting.
- (a) The interim alternative educational setting must be determined by the IEP team.
  - (b) Any interim alternative educational setting in which a child is placed must:
    - 1. Be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and
    - 2. To continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and
    - 3. Include services and modifications to address the behavior and are designed to prevent the behavior from recurring.
- (6) Manifestation determination review.
- (a) If an action is contemplated regarding behavior or involving a removal that constitutes a change of placement for a child eligible for special education who has engaged in other

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behavior that violated any rule or code of conduct of the local school system that applies to all children:

1. Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice;
  2. Immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.
- (b) The review in part (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.
- (c) In conducting the review, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel:
1. First consider, in terms of the behavior subject to disciplinary action, all relevant information, including:
    - (i) Evaluation and diagnostic assessment results, including the results or other relevant information supplied by the parents of the child;
    - (ii) Observations of the child; and
    - (iii) The child's IEP and placement.
  2. Then determine that:
    - (i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
    - (ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
    - (iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.
- (d) If the IEP team and other qualified personnel determine that any of the standards described in 0520-1-9-.15(6)(c)2 were not met, the behavior must be considered a manifestation of the child's disability.
- (e) If, in the review described in subparagraphs (b) and (c) of this section, a local school system identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.
- (7) Determination that behavior was not a manifestation of the disability.
- (a) If the result of the review is that the behavior of the child eligible for special education was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except the child must still receive FAPE.

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- (b) Additional requirement.
    - 1. If the local school system initiates disciplinary procedures applicable to all children, the local school system shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.
  - (c) Child's status during due process proceedings.
    - 1. If a parent requests a hearing to challenge a determination, made through the review, that the behavior of the child was not a manifestation of the child's disability, the child must remain in his or her current educational placement unless:
      - (i) The child is in an interim alternative educational setting forty-five (45) day placement for weapons or drug violations; or
      - (ii) A hearing officer determines that the local school system has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- (8) Parent appeal.
  - (a) General.
    - 1. If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.
    - 2. The State or local school system shall arrange for an expedited hearing if a hearing is requested by a parent.
  - (b) Review of decision.
    - 1. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the local school system has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with manifestation review procedures.
    - 2. In reviewing a decision to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in 0520-1-9-.15(2).
- (9) Placement during appeals.
  - (a) General.
    - 1. If a parent requests a hearing or an appeal regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the forty-five (45) day time period provided for, whichever occurs first, unless the parent and local school system agree otherwise.
  - (b) Current placement.
    - 1. If a child is placed in an interim alternative educational setting and school personnel propose to change the child's placement after expiration of the interim alternative

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placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting) except as provided under expedited hearing.

- (c) Expedited hearing.
  - 1. If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local school system may request an expedited due process hearing.
  - 2. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officers shall apply the standards in 0520-1-9-.15(c).
  - 3. The placement ordered may not be longer than forty-five (45) days.
  - 4. The expedited hearing procedure may be repeated, as necessary.
- (10) Expedited due process hearings.
  - (a) Expedited due process hearings must be conducted by due process hearing officers and written decisions mailed to parties within thirty (30) days of the local school system's receipt of the parent's request for the hearing.
  - (b) The decisions on expedited due process hearings are appealable under the same rules as other due process hearings.
- (11) Referral to and action by law enforcement and judicial authorities.
  - (a) Nothing prohibits a local school system from reporting a crime committed by a child eligible for special education to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child eligible for special education.
  - (b) A local school system reporting a crime committed by an child eligible for special education shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.
  - (c) A local school system reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by 34 CFR § Part 99 (FERPA).
- (12) Protections for children not yet eligible for special education and related services.
  - (a) A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the local school system, may assert any of the protections provided for in this part if the local school system had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
  - (b) A local school system must be deemed to have knowledge that a child is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

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1. The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement to personnel of the appropriate local school system) that the child is in need of special education and related services;
2. The behavior or performance of the child demonstrates the need for these services;
3. The parent of the child has requested an evaluation of the child; or
4. The teacher of the child, or other personnel of the local school system, has expressed concern about the behavior or performance of the child to the director of special education of the local school system or to other personnel in accordance with the agency's established Child Find or special education referral system.

(c) Exception.

1. A local school system would not be deemed to have knowledge if as a result of receiving the information, the local school system:
  - (i) Either conducted an evaluation and determined that the child was not a child with a disability or determined that an evaluation was not necessary; and
  - (ii) Provided notice to the child's parents of its determination under this section.

(d) Conditions that apply if no basis of knowledge.

1. If a local school system does not have knowledge that a child is a child eligible for special education prior to taking disciplinary measures against the child, the local school system may subject the child to the same disciplinary measures as applied to children without disabilities who engaged in comparable behaviors.

(e) Limitations.

1. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
2. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
3. If the child is determined to be a child eligible for special education, taking into consideration information from the evaluation conducted by the local school system and information provided by the parents, the local school system shall provide special education and related services.

(13) Exemption.

- (a) Children identified as intellectually gifted are excluded from the provisions of 0520-1-9-.15 Discipline Procedures of the State Board of Education Rules and Regulations.
- (b) Children with a dual diagnosis that includes intellectually gifted shall be considered as children with a disability and may not be excluded from the requirements of 0520-1-9-.15 Discipline Procedures of the State Board of Education Rules and Regulations.

## 0520-1-9-.16 CHILDREN IN PRIVATE SCHOOLS.

- (1) Child Find for private school children.
  - (a) Each local school system shall locate, identify, and evaluate all private school children the local school system suspects of having disabilities, including religious-school children residing in the jurisdiction of the local school system where parents reside. The activities undertaken to carry out this responsibility for private school children must be comparable to activities undertaken for children in public schools.
  - (b) Each local school system shall consult with appropriate representatives of private school children with disabilities on how to carry out the activities.
- (2) Private school placements by public agencies.
  - (a) Developing an IEP.
    1. Before a local school system places a child eligible for special education in or refers a child to a private school or facility, the agency shall initiate and conduct a meeting to develop an IEP.
    2. The local school system shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school system shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
  - (b) Reviewing and revising the IEP.
    1. After a child eligible for special education enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school system.
    2. If the private school or facility initiates and conducts these meetings, the local school system shall ensure that the parents and a school representative:
      - (i) Are involved in any decision about the child's IEP; and
      - (ii) Agree to any proposed changes in the IEP before those changes are implemented.
  - (c) Responsibility.
    1. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the local school system and the Department.
  - (d) A child eligible for special education shall only be placed by a local school system in a nonpublic educational agency when the IEP team determines that the placement is required for educational reasons and the local school system cannot offer an IEP within the local school system or by contracting with other local school systems.
  - (e) A child eligible for special education who is placed in or referred to a private school or facility by a local school system:
    1. Must be provided special education and related services.

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- (i) In conformance with an IEP that meets the requirements of 34 CFR § 300.340-300.350;
      - (ii) At no cost to the parents or student; and
    - 2. Must be provided an education that meets Tennessee standards for licensure and certification of personnel; and
    - 3. Has all of the rights of a child eligible for special education who is served by the LEA.
  - (f) An appropriate in-state program that can implement an IEP shall be used unless there exists an out-of-state program that is closer to the child's local school system.
- (3) Placement of children by parents if FAPE is at issue.
- (a) This part does not require a local school system to pay for the cost of education, including special education and related services, of a child eligible for special education at a private school or facility if that local school system made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with 34 CFR § 300.450-300.462 of the IDEA and Tennessee state law.
  - (b) Disagreements about FAPE.
    - 1. Disagreements between a parent and a local school system regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to due process procedures.
  - (c) Reimbursement for private school placement.
    - 1. If the parents of a child eligible for special education, who previously received special education and related services under the authority of a local school system, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the local school system, a court or a hearing officer may require the local school system to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the Department and local school systems.
  - (d) Limitation on reimbursement.
    - 1. The cost of reimbursement described may be reduced or denied if:
      - (i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the local school system to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
      - (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the



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parents did not give written notice to the local school system of the information required in 0520-1-9-.16(3)(d);

- (iii) Prior to the parents' removal of the child from the public school, the local school system informed the parents, through the notice requirements described in this rule, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (iv) There is a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception.

- 1. Notwithstanding the notice requirement, the cost of reimbursement may not be reduced or denied for failure to provide the notice if :
  - (i) The parent is illiterate and cannot write in English;
  - (ii) Compliance with the placement would likely result in physical or serious emotional harm to the child;
  - (iii) The school prevented the parent from providing the notice; or
  - (iv) The parents had not received notice of the notice requirement.

(4) Private school children unilaterally placed by their parents.

(a) Determining services for private school children unilaterally placed by their parents.

- 1. No individual right to special education and related services.
  - (i) No private school child eligible for special education has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.
  - (ii) Decisions about the services that will be provided to private school children eligible for special education must be made in accordance with parts 2 and 3 below.
- 2. Consultation with representatives of private school children eligible for special education.
  - (i) Each local school system shall consult, in a timely and meaningful way, with appropriate representatives of private schools with children eligible for special education in light of the funding under 34 CFR § 300.453, the number of private school children eligible for special education, the needs of private school children eligible for special education, and their location to decide:
    - (I) Which children will receive services;
    - (II) What services will be provided;

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- (III) How and where the services will be provided; and
    - (IV) How the services provided will be evaluated.
  - (ii) Genuine opportunity.
    - (I) Each local school system shall give appropriate representatives of private school with children eligible for special education a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.
  - (iii) Timing.
    - (I) The consultation required by this part must occur before the local school system makes any decision that affects the opportunities of private schools with children eligible for special education to participate in services under 34 CFR § 300.452 and 34 CFR § 300.62.
  - (iv) Decisions.
    - (I) The local school system shall make the final decisions with respect to the services to be provided to children eligible for special education in private schools.
- 3. Service plan for each child served.
  - (i) If a child eligible for special education is enrolled in a religious or other private school and will receive special education or related services from a local school system, the local school system shall:
    - (I) Initiate and conduct meetings to develop, review, and revise a service plan for the child, and
    - (II) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the local school system shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
  - (b) Services provided to private school children unilaterally placed by their parents.
    - 1. The services provided to private schools with children eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools.
    - 2. Private schools with children eligible for special education may receive a different amount of service than children with disabilities in public schools.
    - 3. No private school with a child eligible for special education is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.
    - 4. Services must be provided in accordance with a service plan.

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- (i) Each private school with a child eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the local school system will provide to the child in light of the services that the local school system has determined, annually.
  - (ii) The service plan must, to the extent appropriate:
    - (I) Meet the IEP content requirements with respect to the services provided; and
    - (II) Be developed, reviewed, and revised consistent with IEP requirements.
- (c) Services provided in accordance with a service plan to private school children unilaterally placed by their parents.
  - 1. The Department shall ensure that a service plan is developed and implemented for each private school child eligible for special education who has been designated to receive special education and related services that the LEA will provide to the child in light of 0520-1-9-.16(4)(a) and (b).
- (d) Expenditures for private school children unilaterally placed by their parents.
  - 1. Each local school system must spend on the following amounts providing special education and related services to private school children eligible for special education:
    - (i) For children aged three (3) through twenty-one (21) inclusive, an amount that is the same proportion of the local school system's total subgrant under section 611(g) of the IDEA as the number of private school children eligible for special education aged three (3) through twenty-one (21) inclusive residing in its jurisdiction is to the total number of children eligible for special education in its jurisdiction aged three (3) through twenty-one (21) inclusive; and
    - (ii) For children aged three (3) through five (5), an amount that is the same proportion of the local school system's total subgrant under section 619(g) of the IDEA as the number of private school children eligible for special education aged three (3) through five (5) residing in its jurisdiction is to the total number of children eligible for special education in its jurisdiction aged three (3) through five (5).
  - 2. Child count.
    - (i) Each local school system shall:
      - (I) Consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children eligible for special education; and
      - (II) Ensure that the count is conducted on December 1 of each year.
    - (ii) The child count must be used to determine the proportional amount that the local school system must spend on providing special education and related

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services to private school children eligible for special education in the next subsequent fiscal year.

3. Expenditures for Child Find activities may not be considered in determining whether the local school system has met these requirements.
  4. Additional services permissible.
    - (i) State and local educational agencies are not prohibited from providing services to private school children eligible for special education in excess of those required by this part, consistent with state law or local policy.
- (e) Location of services and transportation.
1. On-site.
    - (i) Services provided to private school children eligible for special education may be provided on-site at a child's private school, including a religious school, to the extent consistent with law.
  2. Transportation.
    - (i) If necessary for the child to benefit from or participate in the services provided under this part, a private school with a child eligible for special education must be provided transportation:
      - (I) From the child's school or the child's home to a site other than the private school; and
      - (II) From the service site to the private school, or to the child's home, depending on the timing of the services.
    - (ii) Local school systems are not required to provide transportation from the child's home to the private school.
  3. Cost of transportation.
    - (i) The cost of this transportation may be included in calculating whether the local school system has met their expenditure requirement.
- (f) Complaints.
1. Due process inapplicable.
    - (i) The due process procedures do not apply to complaints that a local school system has failed to meet expenditure and service including the provision of services indicated on the child's service plan.
  2. Due process applicable.
    - (i) The due process procedures do apply to complaints that a local school system has failed to meet the requirements of Child Find for private school children eligible for special education including the requirements of evaluation and determination of eligibility.

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3. State complaints.
  - (i) Complaints that the local school system has failed to meet the requirements of 0520-1-9-.16 may be filed with the Division.
- (g) Separate classes prohibited.
  1. A local school system may not use funds available under section 611 or 619 of the IDEA for classes that are organized separately on the basis of school enrollment or religion of the students if:
    - (i) The classes are at the same site; and
    - (ii) The classes include students enrolled in public schools and students enrolled in private schools.
- (h) Requirement that funds not benefit a private school.
  1. A local school system may not use funds provided under section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.
  2. The local school system shall use funds provided under IDEA Part B to meet the special education and related services needs of children eligible for special education enrolled in private schools, but not for:
    - (i) The needs of a private school; or
    - (ii) The general needs of the students enrolled in the private school.
- (i) Use of public school personnel.
  1. A local school system may use funds available under sections 611 and 619 of the IDEA to make public school personnel available in other than public facilities:
    - (i) To the extent necessary to provide services for private school children eligible for special education; and
    - (ii) If those services are not normally provided by the private school.
- (j) Use of private school personnel.
  1. A local school system may use funds available under section 611 or 619 of the IDEA to pay for services of an employee:
    - (i) Who performs the services outside of his or her regular hours of duty; and
    - (ii) Who performs the services under public supervision and control.
- (k) Requirements concerning property, equipment, and supplies for the benefit of private school children eligible for special education.
  1. A local school system must keep title to and exercise continuing administrative control of all property, equipment, and supplies acquired with funds under section

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- 611 or 619 of the IDEA for the benefit of private school children eligible for special education.
2. The local school system may place equipment and supplies in a private school for the period of time needed for the program.
  3. The local school system shall ensure that the equipment and supplies placed in a private school:
    - (i) Are used only for children eligible for special education; and
    - (ii) Can be removed from the private school without remodeling the private school facility.
  4. The local school system shall remove equipment and supplies from a private school if:
    - (i) The equipment and supplies are no longer needed for children eligible for special education; or
    - (ii) Removal is necessary to avoid unauthorized use of the equipment and supplies for children other than children eligible for special education.
  5. No funds for IDEA Part B may be used for repairs, minor remodeling, or construction of private school facilities.

Authority: TCA § 49-1-302, 49-10-101, and 49-10-701.

6/15/01